ADDRESSES DELIVERED FEBRUARY 17TH, 1920, AND HISTORICAL SKETCH PREPARED TO COMMEMORATE THE SEMI-CENTENARY OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

1870–1920

FORTY-FOURTH STREET FAÇADE OF THE PRESENT BUILDING

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OF THE CITY OF NEW YORK

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THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

SEMI-CENTENARY CELEBRATION

HELD AT THE

HOUSE OF THE ASSOCIATION

42 West 44th Street

ON

Tuesday Evening, February 17th, 1920

AT HALF-PAST EIGHT O'CLOCK

John G. Milburn, Esq., President, Presiding.

The Chairman: Gentlemen of the Association: We have assembled to celebrate the Fiftieth Anniversary of the founding of the Association. In December, 1869, a call for a meeting at which measures should be taken for the organization of the Association was signed by nearly two hundred and fifty members of the Bar, in which it was stated that such an association would "lead to the creation of more intimate relations between" the members "of the legal profession than now exist, and would at the same time sustain the profession in its proper position in the community and thereby enable it in many ways to promote the interests of the public." At a meet-

ing held on the 15th day of February, 1870, the constitution of the Association was adopted, its objects being, as therein stated, "to maintain the honor and dignity of the profession of the law, to increase its usefulness in promoting the due administration of justice, and to cultivate social intercourse among its members." Much has been accomplished by the Association thus founded between then and now. It occupies and owns this stately building. It has, by purchase and gift, a library of the first rank of over one hundred and twenty-five thousand volumes which has cost it over four hundred thousand dollars. It has a membership of over two thousand which is steadily increasing. It is engaged in many activities all within the range of its various objects and purposes. It has an honorable and creditable past. Its future depends upon the support and *esprit de corps* of the profession. Of all of this you will hear more from the speakers of the evening. I am merely the usher of the occasion. But I have an item of glad tidings to announce which I know you will welcome. A short time ago a movement was set on foot to raise exclusively from the members of the Association the sum of one hundred and fifty thousand dollars to be used in paying its floating debt, amounting to one hundred and seven thousand dollars, which has inevitably accumulated during the past, and in providing a fund to meet any contingencies that may arise during the next year or two while its membership is being increased. This morning the amount which has been so rasied was over one hundred and eleven thousand dollars (applause) contributed by nine hundred and thirty subscribers. The floating debt is a thing of the past, and we hope forever. We owe that

really great achievement to the efforts of over two hundred of our younger members who have given their time and their energies to it without stint under the able and indefatigable leadership of our worthy treasurer, Mr. Powell. (Applause.)

Very few of the men who signed the original call for the organization of the Association are alive. We are fortunate in having two of them with us to-night—Mr. Everett P. Wheeler and Mr. Julien T. Davies. (Applause.) I greet them as worthy representatives of that notable body, both of the great majority who have gone and of those who survive, and I call upon Mr. Davies to speak for the founders. (Applause.)

Mr. Davies: Mr. President, Mr. Presiding Justice, and fellow members of the Bar Association: The honor and privilege of representing upon the Fiftieth Anniversary of the formation of this Association, the signers of the call for its organization, are only second to those of having been one of those signers.

Of the two hundred and thirty-one members of the Bar of the City of New York who affixed their signatures, but twelve survive who have been so fortunate as to witness the immediate success of the first efforts of this organization; the recognition of the value of its ideas, evidenced by the creation of numerous Bar Associations in the United States, all followers of us as the pioneer, our power as a corrective and disciplining force upon the standards of conduct in the profession, and finally our celebration to-night of the Fiftieth Anniversary of our nativity.

Fifty years ago, the Bar of the City of New York, by a

combination between the leaders of Tammany Hall and a few members of the Judiciary, was being reduced to a condition in which the usefulness of its most able and upright members was becoming impaired. They were being forced either into abhorrent relations with the forces of evil, or relinquishment of their activities in the trial of causes.

Tammany Hall, in the latter part of the sixties, was firmly entrenched in the control of political power in the City of New York. Its leaders, William M. Tweed, Peter B. Sweeney, Richard Connolly, and Oakley Hall gradually become bolder in their operations and naturally fortified themselves in their plundering of the city treasury by achieving the control of members of the local judiciary. The immediate result was partial demoralization of the Bench and the Bar. Unscrupulous and obscure lawyers, friends and favorites of these leaders and the judges they controlled, became prominent and were employed in causes merely for their influence. The leading members of the Bar found themselves in the humiliating position of having to explain to their clients that they were powerless to win their causes on their merits. Almost immediately after my admission to the Bar in November, 1867, there came under my observation a flagrant instance of the power and the unscrupulousness of this combination of political and judicial forces. In 1868 my father, Henry E. Davies, was the counsel of the Mutual Life Insurance Company, and I had the honor of association with him. Word was conveyed to him that a Supreme Court judge had signed an *ex parte* order appointing William M. Tweed receiver of that company, which was then amply solvent,

free from attack on any but a false statement of facts, and possessing assets of about $15,000,000, a large sum for those days. Mr. Frederick S. Winton, then president of the company, introduced a small howitzer into the company's offices and armed its clerks and sent word to Tweed that any attempt to take possession would be resisted by force of arms. At the same time, a prominent member of the Bar who had the confidence of the judge was employed as counsel for the company, and obtained the vacating order. There was no effort to take possession by the receiver, the order was vacated, *ex parte*, as it had been granted, no papers were filed and no allusion to the matter appeared in any newspaper. This incident, however, indicated the length to which the Tammany Ring were willing to go in their greed, and was really terrifying to the few who knew of it. But the public was fully advised of the reaching out into the field of corporate activities, by the leaders of Tammany Hall, when William M. Tweed and Peter B. Sweeney were elected members of the Board of Directors of the Erie Railroad, in the autumn of 1866, that had then just passed under the control of Jay Gould and James Fisk, Jr. Then followed with the next few months tremendous legal battles arising out of the attempt of Commodore Vanderbilt to obtain control of the Erie Railroad and to oust Gould and Fisk therefrom, and the effort of Gould and Fisk to wrench the Albany and Susquehanna Railroad from Joseph Ramsay.

Many of the occurrences that grew out of these legal conflicts were more in place in the private wars of mediæval times than in the alleged civilization of the nineteenth century.

In November, 1868, upon a bill filed for August Belmont by Charles A. Rapallo in the interest of Commodore Vanderbilt, Henry E. Davies was appointed receiver of the Erie Railroad by Judge Sutherland. He went to the offices of the Road, then in the Opera House building, on the corner of Eighth Avenue and Twenty-third Street, to take possession of the property, accompanied by his counsel, Noah Davis and Dorman B. Eaton, who had formerly been counsel for the company. They found the building fortified and a sentry at the gate. He denied them entrance, saying that his orders were to admit no one. The receiver, a masterful man in his way, pushed the man to one side with the remark that the orders did not apply to them and the sentry yielded passage. The party marched upstairs and walked into a room where James Fisk was sitting at a desk writing, in his shirt sleeves. The receiver explained his business, when Fisk jumped up and refused possession with voluble profanity, opened a door and admitted into the room a body of villainous-looking men, who marched in under the direction of a captain and ranged themselves in military order against the wall. Fisk gave the order "Throw those men out of the window," and the bodyguard advanced to execute it. At that moment Jay Gould, accompanied by David Dudley Field and John K. Porter, his counsel, entered the room. As soon as they grasped the situation, Judge Porter, who had sat on the Court of Appeals Bench with the receiver, said, "Mr. Gould, if there be any violence, I shall retire from your case." Mr. Gould then advanced, quieted Fisk, and Noah Davis read Judge Sutherland's order. The receiver then formally demanded possession,

which was refused and the attacking party, outnumbered and repulsed, retired in good order.

This was only one of many similar incidents in these battles royal. Their culmination was a riot in the fall of 1870, between the forces of conflicting receivers of the Albany and Susquehanna Railroad, during which there was some bloodshed, resulting in the taking possession of the road by Governor Hoffman, who ran it by the aid of members of his staff, as the representative of all parties and all the Supreme Court receivers who claimed possession.

Mr. Henry Adams in his article on the New York Gold Conspiracy, published in the *Westminster Review* in October, 1870, expresses the view of these occurrences and their consequences entertained by an unusually keen and intelligent observer.

"The degradation of the Bench had been rapidly followed by the degradation of the Bar. Prominent and learned lawyers were already accustomed to avail themselves of social or business relations with judges to forward private purposes. One whose partner might be elevated to the bench was certain to be generally retained, in cases brought before this special judge; and litigants were taught by experience that a retainer in such cases was profitably bestowed. Others found a similar advantage resulting from known social relations with the court."

This general and sweeping denunciation by Henry Adams, an extreme statement of what, nevertheless, was the current view, did not apply truthfully to the Bench and the Bar of the City of New York as a whole. So far as the Bench was concerned, but three judges were found open to attack.

That the Bar of New York, with some conspicuous and more inconspicuous exceptions, was still animated by a lofty spirit of adherence to its best traditions, and fully recognized its responsibility to the community of leadership in every movement necessary to maintain the purity of the administration of justice, was made manifest by the formation of this Association and the important part it played in the momentous events that immediately followed.

The idea of such a body as this had been entertained and mooted by leading members of the Bar for several years, but only from the standpoint of the interests of the lawyers themselves, who had much felt the want of an adequate and accessible library and a meeting place for social intercourse, as well as for discussion of and action upon matters especially interesting to the profession. The loss of prestige in the community, the impediments to adequate protection of clients, the deep sense of wrong and of wounded honor arising from constant violations of the ideals and traditions of our profession, crystallized the vague thoughts of combination, and brought about a realization that it was no longer to be regarded as a convenience, but must be held to be a necessity in the common interest of the profession and the community. The railroad litigations above referred to had been attended by such abuses of judicial discretion and such scandalous conflicts of jurisdiction between Supreme Court Justices of this city and country districts, that the conclusion was forced upon the Bar of the City that its members must unite for protection of themselves and of the community, in an effort to break the combination between Tammany Hall and a few members of the local judiciary.

The call for the organization of this Association was the Emancipation Proclamation of the Bar. Its freedom shortly followed, but was not conferred by the act of an overruling power. It was claimed and obtained by the initiation and the action of the oppressed themselves, who threw off their fetters by a rising that, had it been unsuccessful, would have riveted them more firmly.

This call marked the inception of the movement of the Bar to rid the community of the influences that denied justice in the courts and made a mockery of the impartiality of its administration.

At the election of November, 1871, the power of the corrupt leaders of Tammany Hall was crushed at the polls, not merely by the action of an aroused and outraged community greatly assisted by the press, but largely by the efforts of members of this Association, who took an active part in the campaign.

The younger members of the Bar, with the enthusiasm and energy of youth, were quick to follow the leadership of their eminent seniors, and to range themselves on the side of the purity of the Bench and the independence of the Bar, and to assist in reaching these objectives by attacking the corrupt political syndicate that controlled the situation

One of the contributing factors to the success was an organization known as the Young Men's Municipal Reform Association, formed by about fifteen hundred men, mostly lawyers not long admitted to the Bar, organized and officered principally by junior members of this body. Its president was George C. Barrett, elected to the Supreme Court Bench for the first time in that campaign.

These young men conducted a house to house canvass in many of the wards of the city for the purpose of ascertaining who were the legal voters, and where they resided, manned the polls on the day of election, and contributed largely towards the prevention of repeating and other methods of illegality in the election.

The Association was quick to move and act as soon as the results of the election were known. At the meeting held November 14, 1871, its Judiciary Committee was instructed to ascertain whether current charges reflecting upon the administration of justice in the city had any just foundation in trustworthy evidences, and to collect and procure such evidences and to report.

At the same meeting, the Association declared as a safe guide of judicial action, the lofty and elevated rules adopted and observed by Sir Matthew Hale, who states in part as follows:

> "That being entrusted for God and the country, the administration of justice be done uprightly, deliberately, resolutely.
>
> "That in the execution of justice the judge carefully lay aside his own passions and not give way to them, however provoked.
>
> "That he be not biassed with compassion to the poor nor with favor to the rich in points of justice.
>
> "That he be not solicitous what men shall say or think so long as he keeps himself exactly according to rules of justice."

The report of the Judiciary Committee was presented and adopted January 4, 1872, and was accompanied by a proposed Memorial to the Legislature, calling attention to

the current charges against members of the New York Judiciary and to the result of the recent election, and praying that inquiries, investigations, and proceedings would be made and taken.

Upon the request of the Judiciary Committee of the Assembly, counsel for the Association subsequently prepared specific charges against three judges, two of whom were impeached, tried and removed from office, and the other resigned.

At the request of the managers appointed by the Assembly to conduct the impeachment trials, the Association appointed Joshua M. Van Cott, John E. Parsons, and Albert Stickney to give aid in the prosecution of the charges, who substantially conducted the trials to a successful result.

Thus, at the beginning of its existence did this Association, by one of the most signal services ever rendered by our profession to the community of which it was a part, justify its nativity and its existence, and demonstrate that it lived and moved and had its being for the purpose as simply and yet so strongly enunciated in its charter,

> "Of maintaining the honor and dignity of the profession of the law, and increasing its usefulness in promoting the due administration of justice."

It is impossible to overstate the importance of the service that this Association then rendered to the City of New York by its fearless assumption of the leadership that was its natural and inherited prerogative, in this cleansing of the Augean stables of the Temple of Justice. It is no exaggeration to state that the commercial prosperity of

New York was seriously threatened at this time by the exposure of business interests to the attacks of predatory suitors, assisted by corrupt influences in the maladministration of justice in the courts. It is well known that the Union Pacific Railroad removed its offices from New York to Boston overnight in consequence of an unwarranted and *ex parte* injunction restraining it from paying the first coupons upon its mortgage bonds. The action of the Association further demonstrated the solidarity of members of our profession with their fellow-citizens engaged in other pursuits. After 1872, it was more clear in the City of New York than it had been for years before, that a fearless, learned, independent and upright Bar, not only was indispensable to the just disposition upon their merits of all questions, whether arising in court or in consultation, and upon the facts as they existed, and not as they might be speciously stated to exist, but also to the selection of competent judges. There is no West Point for judges in our profession. They are promoted from the ranks. They are our superior officers, discipline and order require and obtain willing recognition of that fact, but they nevertheless are raised to their elevation from our numbers. According to the tone and standard of the profession as a whole, will necessarily be the ideals of the Bench. The vigorous and aggressive attitude of the Association shown in 1872 has fortunately not been since fully demanded, but the spirit that created it has been manifested from time to time to the extent that was necessary towards questions that have since presented themselves affecting the Bench and the Bar.

This Association has uniformly expressed its views with

no uncertain voice upon the qualifications of nominees of all parties for judicial office, free from considerations of partisanship. It has always manfully contended for the principle of renomination, by all parties and without opposition, of judicial officers who have with industry, integrity, and capability filled their positions. It has exercised a constant supervision over proposed legislation and has given to Congress and the Legislature of our State the benefit of its experience and its learning in amendment of existing statutes and enactment of new laws demanded by the changing needs of the people.

It has been vigilant in rendering assistance to the courts, in disciplining and expelling members of the Bar who have departed from the high standards and traditions of our profession, and by its adherence to sound ideals and by wholesome fear of its activities has without doubt strengthened the moral fiber of many who were sorely tempted and who might have fallen but for its sustaining force.

In dwelling upon the work of this Association during the past fifty years in maintaining the honor and dignity of the profession of the law, naturally there arises before us some mental conception of the characteristics of that honor and dignity. Whether one contemplates a lawyer's life and work from the standpoint of over fifty years' experience or of a few months' trial, each member of our profession must feel that he has been set apart from the mass of his fellows for a peculiar and distinct career that demands adherence to the highest standard of conduct. It is not essential to claim by comparison any superiority in usefulness or distinction of lawyers in general over those who

have chosen other spheres of activities. Fifty or a hundred years ago, such a claim might have been put forth with greater force than now. The greatly increased productivity of the world, due to inventions and use of machinery and vastly greater facilities of communication and transportation, has led to such distributed possession of wealth and to such ease in its acquisition that the brain-worker who, if he is to be actually a lawyer and not a broker in legal business, must pursue thought for thought's sake and cannot accumulate largely, and in a community where the power of money is held as most desirable and admirable, must necessarily yield in importance. It is enough for us to claim that the peculiar features of our calling give to it all the honor and dignity that human nature requires for complete satisfaction. First and foremost among those characteristics is the attitude of sympathetic helpfulness that the counsellor must assume towards him who applies for aid, who is never allowed to depart without receiving some thought that will assist in the disposition of the problem presented. Then comes the intellectual pleasure of the search for truth, for the true solution of the difficulty in the light of reason and precedent, and the glow of satisfaction with which a conclusion is reached that satisfies the searcher and that can be defended with the strength of him who is thrice armed who feels his quarrel just.

Who can be indifferent to the charm of exercising one's persuasive and convincing powers, be they ample or limited, before court or jury, or, as more frequently appears, upon client, associate or opponent, in the give and take of consultation? Always as a sworn officer of the

Court, always, whether in argument, trial of a cause or consultation, engaged as part of the machinery for the administration of justice, always engaged in the furtherance of composition of differences and the avoidance of private warfare, always acting as a helper and a healer, what more honorable and dignified course of life can be pursued than that to which we have fortunately devoted ourselves? In recognition of all this, was this Association formed, has it for fifty years pursued its useful career, and, God willing, may it be continued by our successors for the years to come.

THE CHAIRMAN: The relations between this Association and the Judiciary have always been close and intimate in furthering and realizing its objects and purposes, and most appropriately our next speaker is the Hon. John Proctor Clarke, Presiding Justice of the Appellate Division of the First Department. (Applause.)

HON. JOHN PROCTOR CLARKE: Mr. President and Brethren of the Bar: In 1881, when I began the practice of the law in this city as an Assistant United States Attorney, having been admitted to the Massachusetts Bar the year before, I lodged in a small room on the top floor of a boarding house on West 29th Street, over the way from the old-fashioned red-brick structure, with cast iron balconies and climbing vines then occupied by the Association of the Bar of the City of New York. Stephen P. Nash was then president of the Association, to be followed by Francis N. Bangs and then by James C. Carter. I used to see from time to time the leaders of the Bar going in and out of that

ancient building. Perhaps it was the young eyes that looked upon them, but no lawyers since have ever seemed to me so fine as the leaders of those days. We young men used to haunt the courts where the leaders were presenting their cases to watch their methods and try to grasp the secret of their powers. Evarts, just concluding his remarkable career. Choate, in the full zenith of his powers as the superb advocate. Vanderpoel, with the persistence and fighting vigor of the bulldog. Coudert, with a mind like a Toledo blade, skillful, neat, so deft, so effective both in parry and offense. Beach, distinguished as a cross-examiner. Parsons, cold, unemotional, but deadly. Root, not yet a leader but soon to be,—a master of complicated facts. (Applause.)

Noah Davis was then Presiding Justice of the General Term, elected as the result of one of those sporadic revolts against that organization which off and on, but far more on than off, has dominated this town for more than a century. Who in his wildest imaginings could have dreamed that that top floor lodger would, in the fullness of time, be elected as a result of a similar revolt, and would become the lineal successor of Noah Davis and be now addressing this Association, which had so much to do with that historic event, as Presiding Justice of the Appellate Division of this Department. (Applause.)

As Mr. Davies has so graphically pointed out, the call was signed in November of 1869 and on the 15th day of February, 1870 the constitution was adopted.

I joined the Association in 1886, proposed by Mr. Root, and paid my dues until appointed to the Bench by Governor Roosevelt in December, 1900, when, by the beneficent

provisions of the by-laws, I became exempt, so that I have been a member for thirty-four years. This is the first time I have ever spoken out in meeting.

The declared purpose of the Constitution as adopted was "To maintain the honor and dignity of the profession of the law, to increase its usefulness in promoting the due administration of justice and to cultivate social intercourse among its members."

It is my province to-night to speak on the relations between the Association and the Judiciary. It was organized largely as the result of the dreadful conditions prevailing in this town in the darkest period of its history, financial, social, and legal. As an aftermath of the Civil War there had ensued the wildest speculation. Bold and unscrupulous Wall Street buccaneers were matched by brazen, unprincipled, and reckless politicians who often struck hands in predatory enterprises against the public, and the general low moral tone was reflected in corruption and wickedness upon the Bench. In the so-called Erie war, injunctions and counter-injunctions fell like "autumnal leaves in Vallombrosa." So that at the very beginning of its existence this Association was called upon to initiate and successfully carry out proceedings which resulted in driving three judges from the Bench. The details and the facts connected with those proceedings belong to the historical narratives of Mr. Davies and to the speech of Mr. Root, both of whom participated in and were no small part thereof. I only speak of this to show that at the very beginning of its career this Association did not hesitate to strike at wrongdoing in high places.

Happily, since that gloomy period the efforts of the

Association have been directed to putting good men on the Bench and keeping them there, rather than to driving unfit men off, although the scarcity of its attack has been due to lack of cause and not to want of courage or realization of duty. This Association did not hesitate to oppose, with the utmost vigor, the election of a judge of the Court of Appeals, then holding office by appointment from the Governor to fill a vacancy, a man of estimable private character and of sound professional attainments, who had yielded to political temptation in a close contest for the control of the State and had advised and participated in proceedings subsequently declared to be illegal, and who, after the heat of battle had cooled, persisted in justifying his conduct. And later still, this Association did not hesitate to pass resolutions censuring the conduct of one of my predecessors in accepting the presidency of a financial institution while still Presiding Justice, as improper and tending to discredit the administration of justice.

But, turning to the constructive in counter-distinction to the destructive activities of the Association, it early adopted the principle of advocating the reëlection by all parties of judges who had served a full elective term satisfactorily. Twenty-two years ago a judge, who had served acceptably for twenty-eight years, had been refused renomination by the leader of his party because he refused to yield to the dictation of that leader in the appointment of the clerk of his court. He was not a great judge,—and let me pause to say that nothing irritates me more than the indiscriminate application of that word "great," and especially in relation to judges. The great judges can almost be numbered on the fingers of your hand. Ex-

traordinary opportunity coupled with especial qualifications make the great judge. Mansfield creating commercial law; Marshall breathing life and power into the terse and barren phrases of the constitution, are instances. But, he was a good judge; painstaking, courteous, hard-working, respected by the profession. He was nominated by the opposition party and received independent support, and while he was not elected, that issue was taken into every corner of the State in the subsequent Gubernatorial campaign, in which I took part, and it was a potent factor in defeating the State ticket practically nominated by that leader. The lesson taught by the result of that election was so well learned that the Association has had little difficulty in having the rule applied until this last year when another leader of the same organization, forgetful of the past, undertook to refuse the nomination to another judge who had served acceptably for many years and you all know when that distinct issue was presented to the electorate, what the result was. And, as a corollary to those attempts of this Association to keep good judges upon the Bench, let me instance this, which comes very closely home to me. On the 31st day of December last the assignment of one of the Justices of the Appellate Division in this Department was about to expire. A Justice who had sat upon our Bench for nearly nineteen years, of untiring energy, of great capacity for work, of broad experience, of sound knowledge of the law, and of absolute independence and impartiality. A political movement was inaugurated to prevent his re-assignment, but the protest voiced by this Association, receiving the support that it did from other quarters resulted in his re-assignment by the

Governor and the preservation upon our Bench of one of our most valuable members. (Applause.)

The efforts of the Association under the lead of its Judiciary Committee under its remarkably able chairman, Mr. Guthrie, while not always immediately successful, have been continuous and untiring, directed toward the preservation of the integrity, the independence, and the capacity of the judiciary.

I come now to the Committee on Grievances, the right arm of the Appellate Division, in disciplinary matters. There was a time when the relations of the Association and the Grievance Committee with the Appellate Division were, to speak mildly, not over cordial. In fact, they were not on speaking terms. That condition followed the vote of censure to which I have alluded earlier in my address. But under the suave and tactful and kindly O'Brien, friendly relations were gradually restored becoming entirely reëstablished during the administration of my vigorous and determined predecessor, whose motto was, "Let no guilty man escape," or as it was sometimes paraphrased, "Let no man escape, guilty or not." I am glad to say under my administration these relations have continued with the utmost confidence and mutual dependence.

In my opinion the work of the Grievance Committee alone in and of itself is an entire justification for the existence of this organization. (Applause.) And while I know that the necessary expenses of that Committee have been a heavy burden upon the finances of the Association, it would, in my judgment, be a serious public misfortune if the work of the Committee should be terminated or its activities seriously curtailed. It performs two most im-

portant functions. The first I think of far greater importance than the second, and that is that it serves as a clearing house for complaints between clients and attorneys, misunderstandings are cleared up in the presence of a number of level headed, upright lawyers, perfectly competent to pass upon the questions. Disgruntled people with little or no knowledge of the facts rush in before them, —clients who do not understand the law, who do not appreciate the situations that arise from time to time in a law suit, friction arises, complaints are made. Then they go before that Committee. They get together. Misunderstandings are cleared up, and hundreds and hundreds of complaints which otherwise would be dragged into court are there settled because upon explanations being made no foundations for proceedings appear. And I regard that as the most important part of the work,—the prevention of disciplinary proceedings by clearing up differences. We all realize that a public charge made against a member of the Bar has a serious effect upon his professional standing. So for many years we have adopted a rule of not issuing orders to show cause in disciplinary matters because such an order carries with it the implication that the Judge signing it has determined upon the facts submitted to him that there is ground for disciplinary proceedings. It is to an extent, especially to laymen, a judicial determination. We have, therefore, adopted the practice of not entertaining original proceedings but have insisted that there shall in every case be a preliminary examination, usually by the Grievance Committee of this body or of the committee with similar functions of the New York County Lawyers Association or, very rarely,

the District Attorney. And, we have gone further than that in order to save the profession from unnecessary stigma. We do not put disciplinary matters upon our formal printed calendars, so that so far as the public is concerned, the first intimation of proceedings is the announcement of the appointment of a referee which comes after a preliminary examination has been had, the issues have been joined by petition and answer and after the determination by the court that a sufficient case is made out to warrant prosecution. I regard the prevention of publicity until specific charges are proven by evidence, as of the utmost advantage to the profession.

When it comes to the prosecution of these cases not only do the members of the committee give a great deal of their time and attention to the investigation and formulation of charges, aided by their most efficient attorney, Mr. Chrystie, but when it comes to trial many members of the Association give their valuable services unremunerated to the active prosecution of the cases. They do this as a debt they owe to the profession. There is no class of litigation that comes before our court to which we give more conscientious attention, more painstaking investigation than these disciplinary proceedings. We love our profession. We hold it in the highest regard. We are jealous of its honor, proud of its achievements, anxious and oppressed by charges of wrongdoing.

Since 1896, when the Appellate Division was organized, mainly upon prosecutions by this Association, 236 men have been disbarred, 55 suspended and 39 censured. Seventy-four proceedings were dismissed and nine were discontinued, two men resigned after charges had been

made against them, the certificates of admission of two were revoked as being fraudulently obtained, and the conduct of two were disapproved. A formidable list, and yet when we recall that there is said to be over seventeen thousand lawyers in Greater New York, and when we admit every year in this department alone upon examination and motion from four hundred and fifty to five hundred men, and that the record extends over twenty-three years, the percentage is not large.

Disciplinary proceedings are not confined to any one class or race or nationality or previous condition. The list includes the young, when justice is often tempered with mercy, and the experienced who sin with their eyes open, the successful from a financial point of view and the unsuccessful whose necessities often drive them to forgetfulness of the difference between *meum* and *teum*, the native born and the foreign born. The sole question in each case is, has the respondent violated the ethics, the standards and the obligations of a high-minded and honorable profession. We have cleaned our own house whenever we have found a mess of dirt in it, and with the aid of your Association, we propose to continue in that disagreeable but necessary work.

I cannot leave another branch of the assistance which the Association affords to the Judiciary untouched. And that is in our most important committee, that of Character and Fitness. We are proud of the fact that we have been able to secure and retain for many years the services of such men as your President, Mr. Milburn, your former President, Mr. Wickersham, Mr. Townsend, the Chairman of your Grievance Committee, and Mr. Byrne, who after

leave of absence to do fine work abroad came back to us after the armistice. These gentlemen, under the chairmanship of Judge Leventritt, have for many years, in deference to my personal solicitation, continued their arduous and painstaking work in examining into the antecedents and character of thousands of prospective members of the profession.

Gentlemen of the Bar Association, I congratulate you upon the fifty years of useful service which you have rendered to the profession and to the State. Let me say a last word for the Judiciary. We are not mere official automata, wax figures sitting on a dais, removed from the world and moving in a rarefied air of our own. We are, strange as it may seem to some of you, mere human beings; the fire warms us, the cold stings us, and red blood runs in our veins. By virtue of our position, obeying the great law of compensation, for honor and dignity, we have paid largely in personal liberty, freedom of movement, and above all, public expression of opinion on controversial questions. A good judge, mindful of the obligations of his office, can never be popular. Popularity can only be bought by processes non-judicial. This is especially true of those sitting in appellate tribunals. They are absolutely separated from the rank and file of mankind. They do not come in contact with litigants or witnesses or jurors. All they can hope for is the respect for their work by the reviewing courts, understanding and appreciation by their associates and above and beyond all the confidence of the profession. By your invitation to appear before you on this formal and interesting occasion, I am emboldened to believe that the court over which I preside has

that confidence. I rejoice in the cordial relations which have been established between us and confidently look for a continuance of our mutual respect in our joint efforts to administer justice without fear and without favor. (Prolonged applause.)

THE CHAIRMAN: The last speaker is our leader, Elihu Root. (Applause.)

MR. ROOT: Mr. President, Mr. Presiding Justice and Gentlemen of the Association: I have often thought that the best corrective for the despondency of the men who think that everything is going to the devil is to be found in reading history, and comparing the conditions of one's own time with what one finds in the past. I think we can especially indulge in that process as we consider the most interesting paper Mr. Davies has read to us about the conditions that existed fifty years ago and those at present. With all that we find to cause apprehension and distrust to-day, the candid observer must realize that the standard of public and official purity and integrity is far better now than it was then; the interest of the public in political and public affairs of all kinds is far greater and more effective now than it was then. There has been a great advance in the art of self-government, always it is true, followed by an increase in the complexity and difficulty of such government, but still an advance that presents a most cheerful augury for the future of our institutions.

I think that the organization of this body is a very excellent illustration of the way in which people living under self-governing institutions make their appeals to answer to the needs of the community. The conditions in 1869–1870 were very different from those that we have

to-day. This was a rather small provincial town at that time. I don't remember the precise figures for 1870, but four years before, when I came down from the country to go into the law school, here,—there were less than 750,000 people in New York. Fewer than there are in Cleveland and Detroit and several other American cities now. This was just beginning to be a considerable city. It was small in area, crowded down in the lower part of the island. The highest uptown of all the theatres was Wallack's at 13th Street and Broadway. The principal hotels were down in the neighborhood of Bleecker and Houston streets, the St. Nicholas, the Metropolitan, the Southern. The Fifth Avenue Hotel had just made a great new departure and had gone up to 23rd Street. Everything was very simple.

I looked over the list the other day to see how many were there of the men who were about me when we signed the Constitution in 1870 and I could find but twelve in all of the more than two thousand members of the Association, so that I feel at liberty to talk to the members of the Association a little about what things there were then.

There were not any elevators then, and the principal law offices were on the second story, and the young fellows went up to the top floor. I came into Man & Parsons' office just a year before this call was signed and went up to the fourth floor, 43 Pine Street, in the effort to begin practice. There were no typewriters, no telephones, practically no stenographers. Everything was done in longhand. Mr. Parsons, when I first went into his office, handed me a paper that he had drafted in his own handwriting and told me to make a fair copy of it. I did. The request was never repeated.

Fourteen years afterwards, on going into the United States Attorney's office to help John Clarke enforce the laws of the United States, I found there was no stenographer allowed and I had a great row with the government about saving a sum of money out of my appropriation to hire a stenographer to take down in shorthand the proceedings of trials.

At that time if a woman was seen below Canal Street everybody turned and looked at her and drew inferences either very highly favorable to her fortune or unfavorable to her character. Now, you can't go through the streets for them, walking two by two or four by four, and when you are in a hurry and trying to get up to court to answer the call of the calendar you know how very difficult it is to make time.

Well, we had just begun then the business of having a big city, and we had not learned how. That is one of the reasons why these things Julien Davies has told about occurred. Our election laws were very crude, inefficient and ineffective. They were adapted for rural use where everybody knew everybody else; and it was exceedingly easy to circumvent them in the city districts. Whoever happened to have control of the machinery could do just about what he pleased, and while I was not familiar with the affairs of the city at that time, it is quite evident looking back after acquiring a good deal of familiarity with election laws and machinery, that the Tweed Ring could have kept itself in complete power by merely controlling the election machinery and casting the ballots or counting the ballots whoever cast them, if it had not been for some external force coming in to break them up. The fact that

we hadn't learned how to have a big city, how to handle people in mass, together with the era of circulation which followed the war, and one other thing, that is, that the country had just begun the era of great corporate undertakings—the combination of all these things was the fundamental cause for the conditions as described by Mr. Davies in his interesting paper. The community was quite untrained in the dealings both with corporations and with a great city, and it required leadership. In response to that necessity, the formation of this Association furnished the leadership of men who knew how to lead. They were men who knew the law, and knew the procedure and knew what government was and how it ought to be conducted, and they got leadership both of opinion and of action through this Association to the great good of this community which was perfectly sound and honest then as it is now. The formation of the Association was not a sporadic event. It was the result of a natural development of our institutions. It was the application to the new conditions here of the principles which the Bar of England had applied for centuries in its gradual growth. We never had had a real Bar before. It never had been necessary to have a real Bar before in which lawyers regarded the administration of the law as a whole instead of regarding the administration of the law separately in their particular cases. The need for that was answered by the natural growth of American institutions following along the same line by which England's liberty has been wrought out ever since Magna Carta.

There are thousands of organizations formed every day which run for a while, have their worthy objects and then

wither and die. There are thousands of abuses which go unchallenged. There are thousands of offenders against good morals and common honesty who go unwept. It is only when the need and the institution come together that you have progress as a result, and fifty years ago the need and the institution came together. It was a natural growth, a natural response to a need, and the ability of the institution to respond is shown by what has followed throughout the country ever since. There are more than a thousand State and local associations in the United States now, following the example of this Association. There is an association in practically every State, and then there is the great American Bar Association, with its ten or fifteen thousand members, all at work steadily, many of them hardly conscious of the full scope of what they are doing, but all at work gradually creating an American Bar to administer American justice, to spread throughout the whole of this land where we grow every year more and more interdependent the standards of American justice, the conception of sound morals, of sound procedure, and of true devotion to the administration of law. And I look upon this Association as being a great event in a progressive development of institutions for the maintenance of justice throughout this land.

We no longer have to meet the crass corruption, frauds, thievery which prompted the Bar of 1870 to its original organization. But there are still duties. One of the things about the Bar fifty years ago and the community fifty years ago is very striking when I look back from our present conditions; and that is the fact that at the close of the Civil War there was a sense of security for the principles for which the Bar has stood. Some things were

determined. A man could plant his feet upon the ground of the Constitution and if he could hold himself there he was safe. Certain principles were established and stood out strongly after the decisions of Marbury and Madison, Gibbons and Ogden, McCullough and Maryland, Cohens and Virginia, Sturges and Crowningshield, Vicksburg and Gettysburg, Lookout Mountain and Appomattox,—all conflicts for the establishment of the same great safeguard for the justice and the liberty of our country, the sacredness of the American Union, founded upon the principles of the Constitution of the United States. Those great battles were gone through so that we might be safe, and we were safe. But to-day all the old and tried institutions and traditions are questioned,—some of them even denied. New theories of government assert themselves with varying opinions as to the method by which they may drive out the old theories. It is not only missionaries from Russia, it is not only the parlor Bolshevists; but all through the community we find people who are in doubt as to whether somebody has not after all got a hold of something better, of some better scheme of things which will make us all vastly happier. You will find a great number of people who think or feel that after all the best way is for men to do what seems to be right at the time, and that it is all wrong that we should be limited by so many constitutional provisions. They feel that we have too much law. The background of all this thought is the assumption that if the inconveniences of so many rules and limitations, so much red tape of the law could be done away with, then the best possible thing under all conceivable circumstances would be done by the best possible men, never for an instant reading his-

TWENTY-NINTH STREET BUILDING

tory to see that the rule of law is all that stands between civil society and the destructive hordes of barbarism.

Now, how are people who spend their time in manufacturing, or farming, or buying and selling, or teaching for that matter, to be made to understand what will happen to them if they succeed in overthrowing the rule of law, if they succeed in demolishing the limitations and the rules of right conduct which were wrought out in the struggles for civil liberty in England and were embodied in our Constitution when we established our government? How are they to reach a sound conclusion? It is only by the leadership of opinion that the Bar can furnish. A great duty is before the Bar. It is not to urge the consideration of their particular cases upon the judge, but to defend the law on which the rights of all their clients depend before the community whose support only can preserve the law. The growth and development of our civil society has produced this Association and the thousand other associations of lawyers all over America, so that they are here ready for the performance of that duty. It is the highest duty that can come to a citizen of a self-governing community, far beyond the vision of the men who formed this Association a half century ago. Here are the means for the preservation of all they held sacred, for our civil liberty cannot be provisioned without every effort, in season and out of season, to bring to the minds of clients, friends, associates, and the public, the eternal truth of the great underlying principles of our system of government and our system of rendering justice.

This great library has been extended far beyond the needs of the ordinary practitioner in order that in the good

time for which it was being unconsciously prepared, scholars might come from all the four quarters of the land to study the jurisprudence that underlies the law. This body of lawyers has been trained to association and combined action through the efforts of its Judiciary Committee and its Grievance Committee and all its various agencies in order that in God's good providence it may be able with the power of organization to meet the great and pressing need of our country for the maintenance of its institutions. It is a fair prophesy that in another half century men will look back and make speeches, telling of the service of this Association, far greater in the next fifty years than in the past fifty years, that in the next half century of usefulness the accomplishments of the Association within the past fifty years will be dwarfed in comparison. The possibilities of an association like this, the spirit of an association like this, the competency of its members, the power of its associated action is a material possession for our future. (Prolonged applause.)

THE CHAIRMAN: Gentlemen, our friend, Mr. Edward W. Sheldon, very kindly complied with our request that he should prepare a history of the Association down to the present time. We asked him to undertake this task because of his wide knowledge of its affairs, his devotion to its interests over a long period of time and his literary skill. His work is done, and it will be a part of the volume which we propose to issue containing the proceedings of this occasion as a permanent and authentic record of the life of the Association. I beg to tender him our grateful thanks for that interesting addition to the invaluable services that he has rendered the Association. (Applause.)

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

HISTORICAL SKETCH

1870–1920

PREPARED FOR THE SEMI-CENTENARY CELEBRATION

FEBRUARY 17TH, 1920

BY

EDWARD W. SHELDON

SUMMARY:

INTRODUCTORY.

I. ORGANIZATION PERIOD.

II. Subsequent Activities.

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

HISTORICAL SKETCH

1870–1920

The association of lawyers for fellowship, mutual benefit, and the maintenance of the dignity of the profession is almost coeval with our legal system. The Inns of Court in England have for centuries occupied a unique position, and besides admitting students, providing for their instruction through the Council of Legal Education, and calling them to the bar, are the guardians of professional standards of conduct. As an associated body the French bar may have had as early an origin, while the federation of the legal profession in Italy is said to date back to the Roman period. But in this country definite organization of the bar arose slowly. Twice in the eighteenth century the lawyers of New York City are reported to have combined in the public interest, once in 1744, to make the tenure of the judiciary dependent solely on good behavior and not on the pleasure of the King, and again in 1763, when the attempt of Lieutenant

Previous associations of the bar

Governor Colden to permit the review by the Governor and Council, both as to the law and the facts, of all cases decided by the courts, was resisted by the bar with a force and unanimity which proved irresistible. But there was no formal union of the profession for either of those purposes. They were but incidents in the widespread and growing revolt of the Colony at large against Royal authority, and the New York lawyers pursued their unorganized way for a century longer. The first corporate combination in the country seems to have been effected in 1802, when, modeled perhaps on the Library Company of Philadelphia, of which Franklin was an incorporator in 1742, The Law Library Company of the City of Philadelphia was chartered. Its sole original purpose was the establishment of an adequate collection of books for the use of its members. In 1827, however, it was merged with The Associated Members of the Bar of Philadelphia, an unincorporated body dating from 1821, and became The Law Association of Philadelphia. The consolidated body is empowered to maintain general supervision over the conduct of lawyers and the administration of justice, but in actual experience this distinguished company has pursued its dignified and honorable career with but rare occasion to exercise either its disciplinary function on members of the bar or its corrective influence over legislation or judicial selections. The corporate emphasis has thus rather been laid on the admirable library of the society and the genial intercourse between members that there proclaims so attractively the brotherhood of the bench and bar.

The Association of the Bar of the City of New York

had no such peaceful origin. It was formed to remove abuses in the administration of justice which threatened the foundations of society, and which not only involved our city and State but had as well supreme national significance. The story is not a pleasant one to recall, but is essential to an understanding of what the Association represents.

Debased conditions in New York City, 1869–70

Toward the end of the year 1869, political and judicial conditions in this city had become intolerably shameful. The country at large was gathering itself together after its fateful internecine struggle. War, the great solvent, as Emerson said, had severed the old adhesions, and the atoms of the social order were assuming a new adjustment. The opening of a continent was under way, and a period of great industrial development was fairly begun. The national energies were unloosed again in peaceful competition, and were moved by an irresistible appeal to the American spirit of freedom and growth. But here in New York, by one of the accidents of democratic government, circumstances had for several years been combining to create a foul blot in municipal conditions. An audacious oligarchy, known the world over as the Tweed Ring, for the most part vulgar and without exception unscrupulous, controlled the municipal government and the State Legislature, and was believed to exert a powerful influence over the Governor. Through its control also of the local judiciary the Ring gained added patronage and was free from attack in the courts. Corruption thus ran riot, and the city was at the lowest moral ebb it has ever reached. Our form of government had not lacked previous experi-

ence of political corruption. In the administration of law, however, our traditions were so sound and so ancient that the nation had arisen, developed, and gone through successive wars and internal disturbances, without losing its firm hold on those elementary principles of private right and public justice which are our Anglo-Saxon heritage. Trained as we have been to that standard, it requires a mental effort fifty years later to picture how black a cloud then enveloped the judicial system in this city. Justice had come to be openly bought, sold, and denied. Without yielding to iniquitous conditions no lawyer could practice in the courts effectively, and no client's cause was safe. As a sequence, if not as a result, of the radical changes introduced in the Constitution of 1846, the profession was crowded with disreputable and ignorant practitioners, and a few unworthy judges debased their high office. It was not possible to know how far the poison of corruption had permeated either bar or bench. But in general estimation both bar and bench had sunk incredibly low, and it was becoming a reproach to belong to either. The maladministration of justice had brought the city into deep reproach throughout the country and had sullied its fair name abroad. Dishonor thus fell upon all American jurisprudence. The situation was full of menace, and it became manifest that unless an attempt at deliverance was undertaken by the lawyers themselves, they as well as the community would suffer irretrievably. Yet while the profession contained many members of high character and courage, they were unorganized, and unless effectively united were helpless. To the founders of this Association must be given the immense credit of correctly

appraising the public danger and of courageously applying the first remedy. In December, 1869, an agreement to form an association and to call a meeting of the subscribers to effect such organization was prepared and subsequently signed by two hundred and thirty-one representatives of the best traditions of the bar. On the evening of February 1, 1870, in what was then known as the Studio Building, at the southwest corner of Fifth Avenue and Twenty-sixth Street, that momentous meeting was held. It was largely attended, and though conducted with dignity and marked repression in speech, was evidently dominated by deep emotion and earnest determination. The first speaker referred in nicely chosen language to the growing number of lawyers in the city, to the importance of their organization for social intercourse and for the freer exchange of ideas, to the value of a well-equipped law library for their use, and to the duty of organization which the profession owed to itself. The real cause for the meeting, the depravity of the bench, was not at first mentioned. Indeed, one of the early speakers expressly said: "We are here simply concerned with ourselves, and not with the Judiciary." And it was not until the meeting was nearly over that Mr. Samuel J. Tilden, who had been urged to say something, deprecated the too peaceable tone of previous remarks, and brought forth great applause when he said: "The Bar, if it is to continue to exist—if it would restore itself to the dignity and honor which it once possessed—must be bold in defense, and if need be, bold in aggression. If it will do its duty to itself, if it will do its duty to the profession

Call for an organization of the bar

Meeting of February 1, 1870

which it follows, and to which it is devoted, the Bar can do everything else. It can have reformed constitutions, it can have a reformed judiciary, it can have the administration of justice made pure and honorable. . . . It is impossible for New York to remain the center of commerce and capital for this continent unless it has an independent bar and an honest Judiciary." In his sketch of Mr. Tilden which adorns the Association's Memorial Book for 1887, Mr. William Allen Butler graphically describes that scene, and adds that the organization of this Association may almost be said to have inaugurated Mr. Tilden's public career.

Having appointed a committee to draft a constitution and by-laws, and another committee to nominate officers, the meeting adjourned until February 15, 1870. On that day a constitution was adopted for "The Bar Association of the City of New York," which declared in memorable words that

Formation of the Bar Association

> "The Association is established to maintain the honor and dignity of the profession of the law, to cultivate social intercourse among its members, and to increase its usefulness in promoting the due administration of justice."

A few by-laws were also adopted, various officers, including Mr. William M. Evarts as President, an Executive Committee and a Committee on Admissions were elected. The Executive Committee, which consisted of the Messrs. Francis C. Barlow, William C. Barrett, James C. Carter, William G. Choate, William E. Curtis, James Emott, Samuel B. Garvin, Stephen P. Nash, Henry Nicoll, John E. Parsons, Charles A. Rapallo, Hamilton W. Robin-

son, Augustus F. Smith, Henry A. Tailer and Sidney Webster, was instructed to prepare a suitable address to the lawyers of the city and State of New York, describing the formation and objects of the Association and suggesting that similar associations be formed throughout the State. This suggestion, as we shall see later, bore fruit in the organization of the New York State Bar Association and of several municipal associations.

A tragic touch was given to the meeting of February 15th by the murderous and almost fatal assault three nights before on Mr. Dorman B. Eaton, who had spoken at the meeting of February 1st and had been previously a resolute critic of the prevailing political and judicial degradation. It was with deep feeling, therefore, that before the meeting of February 15th adjourned, the following preamble and resolution were offered, and it was announced that the sum of money therein named had been provided. They were adopted as offered:

> "WHEREAS, on Saturday, February 12th, an attempt was made on the life of Dorman B. Eaton, under circumstances which lead to the belief that the attempt was instigated by private malice:
>
> "*Resolved*, That the Executive Committee of this Association be instructed to offer through the proper authorities a reward of $5,000 for the apprehension and conviction of the person or persons engaged in such attempt, to be paid on conviction."

Unfortunately Mr. Eaton's assailants escaped detection and the crime remained unpunished.

The first regular quarterly meeting of the Association was held on March 8, 1870, and two hundred and twenty-

eight additional members were elected. The nucleus of a library was provided. A draft act of incorporation, prepared by Mr. Charles A. Rapallo, was submitted and approved. The present corporate title was given in the bill, "The Association of the Bar of the City of New York," and its purposes were declared to be those specified in the original constitution. The following month a club house was acquired. Meanwhile the Association had been fairly launched on its eventful career. While no plan of action was announced nor any prediction of the scope of that career made, the reform of the judiciary was, of course, the great object which the leaders of the Association had in mind. As a first step it was voted in May, 1870, to send a special committee to the Governor of the State to urge that he designate for the General Term of the Supreme Court in the First Department, for the five years' term which had just been established, three justices from other districts in the State. This was for a double purpose, to facilitate the determination of appellate cases, which, with only five justices in the First District, were sadly in arrears, and to prevent suspected justices in that District from sitting in the higher court. William M. Tweed, our ruler at the time, having heard before the vote was taken of this intention of the Association, is reported to have telegraphed the Governor asking that three justices of this District, named by Tweed, be designated for the General Term, and the Governor complied before the Association's committee could be heard. The Governor sought subsequently to excuse his action by alleging the inconvenience of transferring justices from other districts to New York City.

The magnitude of the undertaking on which the Association had embarked was obvious. Corruption was so deep-seated, was supported by such political power in both city and state governments, that extensive preparations were necessary. Public sentiment had to be aroused, and a campaign of education was started. The Association itself needed strengthening and the authority and permanence which incorporation would give. The draft charter approved at the meeting of March 8, 1870, was later presented to the Legislature, but failed of enactment. A materially different charter was then passed by both Houses. As this was quite unsatisfactory in form to the proposed incorporators, the Governor, in the face of their protest, did not feel able to sign the bill. This unexpected check at Albany delayed the Association's plans, and was a striking illustration of the insolent and perverted spirit that actuated our Ring-ridden Legislature. Another attempt at incorporation was made at the next session, and on April 28, 1871, the charter for which the Association asked became law. Meanwhile the clear purpose of the Association to remedy existing judicial abuses had a marked effect in crystallizing public sentiment. The *New York Times* began in July, 1871, the publication of startling evidence of the gross pillaging of the City treasury in which the Ring had been engaged. In September, at a notable meeting in the Cooper Union, a citizens' Executive Committee of Seventy was appointed. This included several members of the Association. The meeting, indeed, was largely guided by representatives of the Association. Mr. Joseph H. Choate, who with Mr. Tilden and others had issued the call for

Judicial reform undertaken

the meeting, presented the stirring resolutions which gave Thomas Nast the text for one of his trenchant cartoons. In October a special committee was appointed by the Association to secure the nomination of suitable candidates for the bench. In behalf of these candidates and of the reform candidates for the Legislature a vigorous but anxious campaign was waged by the Committee of Seventy and the Association. To provide against disorder, apprehension of which was justified both by existing lawless conditions and by the Orange riot of the preceding July, the militia regiments were assembled in their armories on election day. When the vote was announced it was found that the cause of reform had won an overwhelming triumph. Only one of the Ring candidates, Tweed himself, escaped defeat at the polls, and even he did not assume the seat in the State Senate to which he had been elected. After such a victory and with an honest Legislature assured, it was felt that the time had come for aggressive action to purge the bench of any unfit judges. So at a called meeting of the Association, held on November 14th, a special committee was appointed to prepare such amendments of the Code and other laws relating to judicial administration as seemed requisite to correct the abuses that had crept into every department of the government, and the Judiciary Committee was instructed to inquire into the truth of the charges which had gained credit in the community reflecting upon the integrity of the administration of justice, to collect any existing evidence and to report what action the Association should take. The meeting also thought it proper to re-affirm and spread on the minutes as a safe guide of judicial action Sir

Matthew Hale's famous rules. The following incisive resolutions were then adopted:

"*Resolved*, That we may rightfully require from every judicial officer the faithful observance of these salutary rules of action." (As laid down by Sir Matthew Hale.)

"*Resolved*, That the great interests of our profession, no less than the public safety, imperatively demand that whoever shall debase the sacred office of judge, by corrupt administration or by personal or partisan abuse of its powers, shall with due and regular procedure be promptly brought to trial and punishment.

"*Resolved*, That attorneys and advocates are not at liberty to invite or share in any violation of judicial propriety; and whenever they promote or purposely avail themselves of judicial corruption or favoritism, they are accomplices in the betrayal of justice, and unworthy to be members of this Society."

It would have fittingly balanced the great English jurist's solemn declaration, and eloquently expressed the feelings of the Association, if the record might also have contained Chief Justice Marshall's burning words as a delegate to the Virginia Constitutional Convention in 1830: "I have always thought, from my earliest youth till now, that the greatest scourge an angry Heaven ever inflicted on an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent Judiciary."

The Judiciary Committee, to which this delicate and crucial task was entrusted, had for its members the Messrs. Wheeler H. Peckham, Noah Davis, John Slosson, Gilbert M. Speir, Joshua M. Van Cott, William M. Pritchard, James C. Carter, Francis C. Barlow, William Allen Butler, and Charles P. Crosby. At the January, 1872, meeting

the committee reported its unanimous conclusion that the charges which had been referred to the committee for examination, had a just foundation in trustworthy evidence; that they called for investigation by the Legislature, and that the judges against whom the charges were proved should be removed from office. These charges were summarized in substance as follows:

Charges against certain judges

> The gross abuse of judicial powers in granting injunctions, in creating receiverships, in appointing referees, in making excessive allowances to receivers, referees and counsel, in holding court in improper places, in making improper *ex parte* orders, in deciding motions and causes without a hearing, in debasing the writ of *habeas corpus* by granting it in unlawful, and withholding it in lawful, cases, in attempting to intimidate counsel in the discharge of their duty to clients, in preferences and pecuniary advancement to favored counsel, in gross and indecorous conduct in court, in various acts indicating corrupt influence on their official conduct and decisions, and in a general perversion of judicial powers, to evade justice and to accomplish unlawful ends.

The report of the Judiciary Committee was adopted by the Association, and the memorial to the Legislature which the committee submitted was entrusted to a special committee for presentation. In dignity and force this memorial was a model. It read as follows:

Memorial to Legislature

> "To the Honorable the Legislature of the State of New York:
>
> "The Memorial of the Association of the Bar of the City of New York respectfully represents to your

honorable body that the said Association was organized in February, 1870, and was afterwards incorporated by a special act passed April 28, 1871, and that its principal objects are to maintain the honor and dignity of the profession of the law, and to increase its usefulness in promoting the due administration of justice, and that the said Association has, at the present time, more than five hundred members regularly engaged in the practice of the law in the City of New York.

"Your memorialists further represent that for several years last past, the administration of justice in said City, both civil and criminal, has failed to command that measure of public confidence which is essential in order that it may accomplish its beneficent ends; that the integrity of several high judicial officers, occupying places upon the Bench in said City, has fallen under distrust; that the profession and the public have become and are becoming more and more alarmed at the course and tendency of judicial action, and the general suspicions have ripened into convictions that the Courts of justice have been in many instances made the instruments of promoting the frauds and injustice they were created to repress and punish.

"Your memorialists further represent that—charges directly impeaching the judicial integrity of some of the Judges upon the Bench in said City have been repeatedly made in the most explicit manner in many of the principal journals of the day, and thus circulated throughout the United States, and in foreign countries, and that in these and other ways the administration of justice in said City and the honor and fair fame not only of that City, but also of the State, have become widely involved in doubt and suspicion and that by reason of the condition of things herein set forth capitalists have been alarmed, and important commercial and financial enterprises have been diverted from said City,

and that its general prosperity is likely to be still further materially retarded.

"Your memorialists further represent that the public alarm and apprehension thus aroused for the security of the rights of person and property and the general indignation at the reproach thus drawn upon the City of New York and the State were among the exciting causes which led to the popular uprising at the recent election in that City, and that the fruits of that election would be in a great measure lost unless the distrust herein mentioned should be shown to be without foundation or be removed by the application of the most efficient remedies; and that it is due to the administration of justice and to the many learned and upright members of the bench, and to those whose character and usefulness have been and are affected and impaired, that a rigid inquiry should be instituted by the Legislature, and such remedies applied as the results of that inquiry may demand.

"Your memorialists further represent that at one of the regular meetings of said Association, held in the City of New York on the 14th of November, 1871, a resolution was adopted, of which a copy is annexed to this memorial, and that in pursuance of such resolution the Committee therein mentioned afterward made to the said Association a report, of which a copy is also hereto annexed; and that the said report was afterward adopted at a regular meeting of the said Association held on the 4th day of January, 1872, and that at the meeting last mentioned a further resolution was adopted of which a copy is annexed hereto.

"Your memorialists, therefore, pray that your honorable bodies, or one of them, make such inquiries and investigations and take such other proceedings in the premises as to their wisdom may seem fit.

"And as in duty bound will ever pray."

The State Assembly having referred this memorial to the Judiciary Committee for investigation, and the Association having appointed the Messrs. Joshua M. Van Cott, John E. Parsons, and Albert Stickney as its representatives before the Assembly Committee, the inquiry was prosecuted diligently. Charges were formulated against two justices of the Supreme Court for New York County and one judge of the Superior Court of the City of New York. Separate hearings were had in the case of each judge. Between February 19th and April 11th a large amount of testimony was taken. The Assembly Committee reported this testimony on April 30th, and recommended the adoption of resolutions for the impeachment or removal of the three judges. Early in May, while this testimony was still under consideration by the Assembly, one of the Supreme Court justices resigned. In the case of the Superior Court judge the Assembly, in accordance with the prevailing constitutional procedure, voted on May 14th to transmit the charges and supporting testimony to the Governor, who in turn, without passing upon the charges, laid them before the Senate with the recommendation that they be inquired into and if established that the accused judge be removed. Thereupon the Senate convened in extra session, and after overruling the objection raised in behalf of the judge that the Governor's procedure was irregular, and hearing the testimony and the arguments of the same counsel for the Association and of counsel for the accused official, found him guilty as to seven out of the eight charges, and on July 2d removed him from office. He did not long survive this disgrace

Proceedings before the Legislature

and died on July 5, 1872. In the meantime, on May 12th the Assembly had voted to impeach the other Supreme Court justice, and exhibited to the Senate thirty-eight articles of impeachment, charging him with venal and corrupt administration of his office. The details of these charges need not be enumerated. They fully bore out the wrongdoing reported to the Association by its Judiciary Committee in the preceding January and summarized above. Among the specifications was the gross abuse of judicial process in three corporate scandals of vast importance which have become historic, the lawless manipulation of the finances of the Erie Railway Company, the piratical and violent attempt of the officials of that Company to seize the Albany and Susquehanna Railroad, and the baseless receivership of property of the Union Pacific Railroad Company. Mr. Charles Francis Adams drew vivid pictures of these criminal ventures in two magazine articles entitled respectively "A Chapter of Erie," and "An Erie Raid," which, with an equally striking article by his brother Henry, "The Gold Conspiracy," were subsequently published as part of the volume called "Chapters of Erie and Other Essays." Impeachment Managers having been appointed by the Assembly, the Messrs. Van Cott, Parsons, and Stickney were selected as their counsel and bore the burden of the long trial. The Court of Impeachment, consisting of the seven judges of the Court of Appeals and the thirty-one members of the Senate, assembled on May 13th and organized on May 22d. Rules of procedure were adopted, the respondent was arraigned and adjournment taken until July 17th at Saratoga Springs. From that date daily sessions were

had until August 19th, when the respondent was found guilty upon twenty-five of the thirty-eight charges, was unanimously removed from office, and by a vote of thirty-three members of the Court to two, was forever disqualified to hold any office of honor, trust or profit under this State.

It would be hard to point to a more valuable public service than that rendered by the Association in this reform of New York's judicial scandals. Almost singlehanded it organized, conducted, and won a fight against firmly seated corruption. The victory was gained by tireless effort, guided by a noble standard of public and private virtue, and exerted with consummate ability. Countless obstacles were overcome, nearly $40,000, contributed principally by members of the Association, was spent, and the Association never relaxed its vigilance until complete success had crowned its long struggle. In receiving the report of their stewardship from the Messrs. Van Cott, Parsons, and Stickney, the Association expressed to them its enduring gratitude for "the faithful, fearless, and able performance of the duty devolved upon them" in conducting "to a successful issue the most important trial that had ever taken place in the history of our jurisprudence." The press of the City was no less generous in its praise. The *Evening Post* said: "It is difficult to estimate, and almost impossible to over-estimate, the importance of this trial and its signal result." The *Times*' comment was: "With Barnard's conviction the work of judicial reform has, to a certain extent, become a rounded whole. The Bar Association has accomplished what it undertook to do, and

Success of efforts

can address itself to the fresh tasks which invite its hand, with a new lease of public confidence, and with all the prestige of success." The *Tribune* was even more emphatic: "Our gratitude, therefore, to the members of the Bar Association who have borne the heavy labor of this prosecution and faced the danger of a possible failure, the personal consequences of which to them must have been disastrous, can hardly be overstated. They have rid the profession of its greatest scandal and society of one of its worst sources of demoralization. They have taught a cynical and unbelieving world, too, that even in Ring-ridden New York there is a punishment for corruption, and there are crimes which all the powers of fraud, money, and political influence are powerless to protect." While the *Nation* said: "The greatest triumph the cause of reform has yet won was achieved at Albany on Monday last in the conviction of Barnard. . . . The triumph of justice and decency will not be complete, however, unless those who have borne the brunt of the battle are now remembered and honored. We would advise those, too, who doubted whether the Bar Association would be able to do anything for reform inside of ten years, to look at what it has done in the present contest. It took charge of the proceedings against the judges immediately after the election last fall, and in spite of every kind of obstacle, either drove them from the bench or got them impeached. It is safe to say that it is now a power which no judge will forget or set at defiance, and that it will supply that restraining public opinion from which the courts have for a good many years been almost completely exempt."

The praise that came to those three counsel posthumously confirmed the accuracy of the contemporaneous estimate of their work. When Mr. Van Cott died in 1896 his share was described by Mr. Parsons in the Association's memorial as follows: "It was of incalculable service in aiding to establish the high standard upon which he insisted for the discharge of judicial functions and in elevating the standard which he maintained for the relations between lawyers and their clients, the courts, and the community. It was only with feelings of the intensest scorn that he could regard anything which was low or debasing. Mr. Van Cott was a knight-errant in his contest." On Mr. Parsons' own death in 1915, Mr. Joseph H. Choate, who had himself played a matchless part in the great reform, testified to the masterly way in which the Association, at that "shocking point in our history, vindicated its title as the conservator of the Commonwealth," and to the unremitting toil and distinguished ability which Mr. Parsons devoted to the excision of the "terrible cancer" which was "preying upon the vitals" of the courts of justice. And in 1908, on the death of Mr. Stickney, who was the same intrepid and fiery soldier in that contest that he had been in the long years of our Civil War, the Executive Committee thought it fitting, in addition to the regular memorial that was forthcoming, to report to the Association this special minute of him: "Active in the founding of the Association; self-sacrificing and indomitable in its great natal struggle against judicial corruption; resourceful in later councils of importance; fearless and tireless always for the right, he was a gallant and happy warrior in every contest in behalf of those professional and judicial

ideals upon which the inspiration and best achievement of the Association depend."

With such a victory to the credit of the Association, it was not strange that the attention of the lawyers of the country should be drawn to the value of organization. In its initial address to the bar in 1870 the Executive Committee had suggested in the public interest the foundation of similar associations in other cities and counties of the State, as well as the establishment of a State bar association. In direct response to this, the New York State Bar Association was chartered in 1877, the Association of the Bar of Oneida County in 1872, the Buffalo Bar Association in 1876, and the Columbia County Bar Association in 1878. Other counties and cities in the State took similar action. In December, 1872, the lawyers of Chicago followed New York's example by forming the Chicago Bar Association. The Boston bar, likewise stimulated, as may be inferred, by the experiences of their New York brethren, formed the Bar Association of the City of Boston in 1876. This was incorporated in 1886 with powers corresponding to those conferred by our own charter, and has since pursued an active career. Many other associations in different parts of the country came into being under the spur of the great reform achieved here, and that event may fairly be regarded as the moving cause of the systematic organization of the national bar.

Other bar associations formed throughout the country

Its most pressing duty having been fulfilled, the Association settled down to the regular performance of its

corporate duties. These naturally resolved themselves into several main heads, the preservation of the purity of the bench, the correction of professional misbehavior, the supervision of changes in the statutory law, the reform and enforcement of law in general, the cultivation of its study, and the encouragement of fraternal relations with the bar at large and of social intercourse among its members. These subjects will be treated in that order.

Guarding against future judicial corruption

After such an orgy of judicial corruption had been subdued, it followed logically that among "the fresh tasks to which the Association would address itself, the first, and as it has proved, the never-ending duty, should be lessening the chance of a recurrence of that calamity. Within the memory of many of its members, the State had lived under an appointive judiciary. Several of those members had taken part in the Convention which drafted the Constitution of 1846, and had contested the proposed adoption of the elective system. They shared the opinion afterwards expressed by the author of "The American Commonwealth" that it was "a perfectly wanton change," suggested by no necessity and promising no real gain. As Lord Bryce further described it, "There had been an excellent Bench, adorned, as it happened, by one of the greatest judges of modern times, the illustrious Chancellor Kent. . . . But the quest of a more perfect freedom and equality on which the Convention started the people, gave them in twenty-five years Judge Barnard instead of Chancellor Kent." If the State had possessed an organized bar in 1846, this "wanton change" in the judicial system might have been averted.

So widely diffused was the doubt, after twenty years of trial, of the desirability of an elective judiciary, that the Constitutional Convention of 1867–68 had advised that the people should decide by ballot whether the judges of the higher courts should thereafter be appointed or elected. The Association exerted all its influence to have this recommendation carried out. By chapter 314 of the laws of 1873, such a referendum was ordered. In October the Association earnestly recommended to the people of the State the adoption of the proposed constitutional amendment to be submitted at the ensuing November election, and instructed the Executive Committee to provide ballots suitable for the use of voters and to take all other proper measures to secure the adoption of the amendment. An impressive address was thereupon issued to the voters of the State. The results of our experience of the elective system were set forth with moderation and power, and in view of the facts and tendencies thus disclosed, the conviction was declared that the elective system, as applied to judges, "has neither inspired nor strengthened anything good among the people, but that it has lowered the dignity of the bench, weakened the force of law, impaired public confidence in the administration of justice, made criminals more numerous and bold, and life and character and property less safe." A vigorous appeal was therefore made for a return to the method of appointment by the Governor with the advice and consent of the Senate. An organized effort followed to educate the people on this subject. Official ballots had not then been adopted. So the Association printed and distributed a million ballots for use by

Attempt to return to appointive bench

the voters. But, unfortunately, as it seems to us, a large majority of the voters did not wish to take the selection of the judges out of the hands of the politicians, and, in answer to the questions submitted: 1. "Shall the offices of chief judge and associate judges of the court of appeals and of the justices of the supreme court be hereafter filled by appointment? 2. Shall the offices of the judge of the superior court of the city of New York, of the judge of the court of common pleas of the city and county of New York, of the judge of the superior court of Buffalo, of the judge of the city court of Brooklyn, of the county judge of the several counties of this State be hereafter filled by appointment?" about 320,000 votes were cast against, and only about 115,000 for, appointment. This decisive defeat of the proposed amendment apparently removed the question from consideration in the Constitutional Convention of 1894.

Had the result of this submission been different, one important branch of the Association's subsequent labors, the choice and conduct of judicial officers, would probably have been materially diminished. As it was, several years elapsed before it was necessary for the Association to investigate the conduct of a judge in this State. In 1880 charges against a judge of the Marine Court of the city were examined into by the Judiciary Committee, and on its report the Association directed that the Governor be requested to remove the accused officer. Nothing was done by the Governor, and in September of that year the judge died. In 1886 the Association presented to the Legislature charges against a Supreme Court justice in this district. These

Investigations of judicial conduct

were referred to the Assembly Judiciary Committee. That committee, after hearing the representatives of the Association, made a report to the Assembly, which exonerated the justice, but recommended an investigation into the administration of justice in New York City. The Assembly approved the exoneration, but refused to order the investigation. More serious issues were involved in the conduct of a Deputy Attorney General of the State who was shown in a pending judicial proceeding to have abstracted an election return in November, 1891, from the Comptroller's office, and who the following January had been appointed by the Governor to fill a vacancy in the Court of Appeals. When this election scandal was brought to the notice of the Association, a special committee of investigation was appointed. Of that committee of nine members, it is worthy of remark that six had been or afterwards became Presidents of the Association. On hearing the report of the committee the Association decided to transmit the report to the Senate and Assembly, and to ask those bodies to consider whether the conduct of the judge in question did not demand an exercise of the legislative power to remove him. Notwithstanding the damning character of the report the Legislature adjourned without having taken any action towards removing the implicated judge. That the indifference of the Legislature, however, was not shared by the bar of the State was shown by a communication addressed to this Association by more than a hundred members of the bar of the city of Buffalo expressing their approbation of the investigation and condemnation of the judge, and their grateful admiration of this Association's efforts to guard the honor of

the profession, the dignity of the bench, and the due administration of justice. The second name on the list of the signers of that noteworthy communication was that of Mr. John G. Milburn, who is now the President of the Association. At the end of the following December the term of the accused judge expired, but another vacancy having in the meanwhile occurred, he was a candidate for reappointment to fill the vacancy during the year 1893. At a special meeting held in December, 1892, the Association declared its opinion that his reappointment was "eminently unfit," and respectfully requested the Governor to select some other person for the office. The Governor disregarded this protest, and for another year the highest court of the State was under the reproach of having a discredited member. In the autumn of 1893, the Democratic party thought itself strong enough to disregard the condemnation of the bar of the State, and nominated this same judge for a full term of fourteen years. Again the Association protested, and at a meeting held early in October took this emphatic action:

> "*Resolved*, That this Association urges upon every good citizen, without distinction of party, and especially upon every lawyer, the paramount duty of opposing to his utmost this attempt to reward unworthy conduct by a seat on the bench of our highest judicial tribunal."

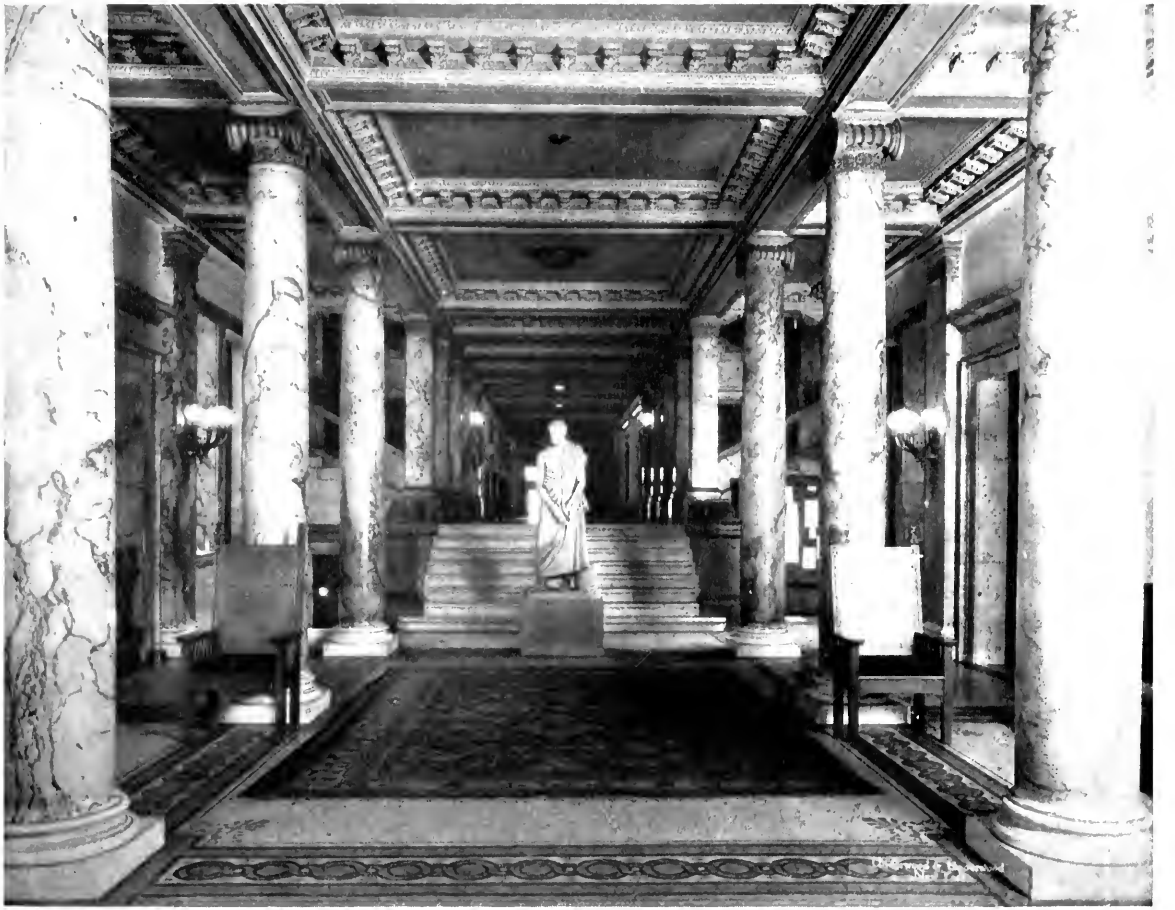
That appeal to the people was successful. Mr. Edward T. Bartlett, a member of the Association since 1870, received a plurality of more than 100,000 votes, the entire Democratic State ticket was defeated, and the Court of Appeals was finally freed of an unworthy judge.

In 1890 the Association presented a memorial to the Legislature regarding the action of a judge of the Court of Common Pleas in a notorious divorce suit, but no action was taken on this by either House.

One other major judicial scandal was dealt with by the Association in 1905 and involved the alleged misconduct of a justice of the Supreme Court from the western part of the State, who had been assigned to the Appellate Division for the Second Department. Here again the acts charged did not arise in the performance of his judicial or professional duties, but were of so heinous a character as to compel the conclusion that the accused was morally unfit to hold judicial office. In substance, the charges involved successful attempts to defraud the Government of the United States. An investigation by a committee of the Association having seemed to show that the charges were well-founded, they were presented to the Legislature and the removal of the official asked. A majority of the Assembly, but not the two-thirds required by the Constitution, having voted in favor of such removal, the Senate took no further action. The State Bar Association and the Jamestown Bar Association participated actively in this investigation.

Scrutiny of judicial nominations

It was early recognized that not only must judicial scandals be removed when they occurred, but that their occurrence should be made less likely by bringing what influence was possible to secure the selection of proper candidates for the bench. The careful scrutiny of judicial nominations has thus been a constant function of the Association. The first opportunity the Association had to exert its power in this respect



HALL OF THE PRESENT BUILDING

was early in January, 1874, when a special meeting was called to protest against a nomination which the President of the United States had made to fill the vacancy in the Chief Justiceship of the Supreme Court, caused by the death of Salmon P. Chase. A copy of the action of the Association condemning this nomination was forwarded to the President and to each Senator. A few days later the nomination was withdrawn by the President and that of Morrison R. Waite substituted and confirmed. What that change in Executive action meant to the country was eloquently portrayed fourteen years later, when the bar of New York met to mourn the death of Chief Justice Waite.

In 1881 the by-laws of the Association were amended, and a Committee on Judicial Nominations was established, whose duty it was "to consider the fitness of candidates nominated or proposed to be nominated, by political parties or otherwise, for election or appointment to judicial office, or to any office connected with the administration of justice, and to confer on that subject with other organizations or with Nominating Conventions, and with power to recommend to the Association, at a special meeting or otherwise, such action in respect to candidates as they may deem necessary or proper."

Committee on Judicial Nominations

In accordance with these powers, the Committee on Judicial Nominations annually thereafter considered the nominations made to judicial office, and if the necessity seemed to exist, reported to the Association. Three general principles commended themselves in the treatment of the subject, the first being that the Association should not involve itself in partisan politics, the second,

that except in case of emergency an attempt to obtain the nomination of particular persons was inexpedient, and the third that where judicial officers had faithfully and ably discharged their duties, such officers should be re-elected. This last principle especially has ever since been advocated and with growing insistence. More than any other available method it tends to reduce the dangers of an elective judiciary. In Pennsylvania, where the judges are also chosen by vote, it has come to be the unwritten law that any judge, eligible for another term, who has shown himself competent and faithful is entitled to a renomination by both political parties, and to a reëlection without a contest. We can only hope that some day New York will give this principle the force of law. For a few years after 1881, the Committee on Judicial Nominations interpreted the new by-law to sanction the attempt, which sometimes succeeded, to obtain the nomination of desirable candidates. But later a narrower policy was apparently adopted, and the committee limited its efforts to reporting to the Association only nominations that were clearly unfit. As a result of this policy the business of the committee declined to such an extent that in January, 1898, a special committee was appointed to consider whether the Association could wisely increase its influence upon judicial nominations. The special committee recommended a broader interpretation of the powers of the Committee on Judicial Nominations, and as a first step advised that the latter committee act in season to enable the Association to take such steps as might be desirable in respect to candidates for judicial office at the ensuing November election. The Associa-

tion in May accepted this advice, and instructed the Committee on Judicial Nominations accordingly. That committee devoted itself industriously to the task. The term of two Supreme Court justices would expire at the end of the year, Justice Joseph F. Daly, a Democrat, who had served acceptably on the bench for twenty-eight years, and Justice William N. Cohen, a Republican, who had been appointed to fill a vacancy, and had already demonstrated his qualifications for the office. It was an excellent opportunity for the application of the Association's principle that capable judges should be retained. The committee conferred with the bar generally, and obtained the signature by three thousand, five hundred lawyers of a petition for the renomination of these two judges. This petition, amplified by the committee's own views, was presented to the various party managers and political conventions, but the Democratic convention refused to nominate either of the two judges. A determined effort was then made by the Association to secure their reëlection. A non-partisan committee of fifty was appointed, and a brisk contest ensued. A public mass meeting to protest against the Democratic rejection of the two judges was held, but both were defeated at the polls. Judge Daly's successful opponent, however, had 18,000 fewer votes than were cast for the rest of the Democratic ticket, and it is probable that this judicial issue again brought about the defeat of the Democratic State ticket.

In 1900, a protest was made by the Association itself against the nomination by the President of a judge of the United States District Court for the Western Dis-

trict of New York. As the judge in the Western District was in the habit of sitting a portion of each year in the Southern District, this nomination was deemed germane to the Association's work, and the protest was pushed. It was not, however, successful in preventing the confirmation of the nomination.

In 1902 Judge John Clinton Gray, of the Court of Appeals, a Democrat, whose term of office was about expiring, failed to receive a renomination by the Republicans. This omission was criticized by the Association, and a determined effort made to secure his reëlection. After a canvass of the entire State the effort was successful, and the State was thereby given the services of that able judge for another term. It was only by a narrow margin that the other candidates on the Republican ticket, with one exception, were elected.

A renewed attempt was made in December, 1905, to render the influence of the Association more effective, and the Committee on Judicial Nominations was asked to study the question afresh. Pending that examination, the community was faced with the fact that in 1906 ten new justices of the Supreme Court were to be elected in the county of New York. A general effort was therefore made to secure the nomination, by the coöperation of all the lawyers of the city, of fit candidates to fill these important offices. As a result a body of nine "Judiciary Nominators" were chosen, and these in turn selected and placed in nomination an excellent ticket. The Association did not originate this movement, but gave its hearty endorsement to the candidates so named. Unfortunately, they were not successful at

the polls, but the attention of the public was thus called in an informing way to the whole subject of judicial nominations.

A general revision of the by-laws was undertaken in 1910, and resulted, among other things, in the abolition of the Committee on Judicial Nominations and the transfer of its work to the Judiciary Committee. This feature of the general revision was first suggested in the annual report of the Judiciary Committee in January, 1910. Prior to that time the committee had been charged with the duty of observing the practical working of our judicial system and of recommending such changes therein as seemed desirable. This somewhat indefinite authorization had not produced an active program for the committee. In 1904, it conferred with the State Commission on the Law's Delays, and in 1907 it considered a rehabilitation of the Municipal Courts and the congestion in the calendars of the City Court. With these exceptions the committee seldom made a formal report to the Association. But under the amended by-laws the committee's powers were declared to include watching the practical working of the courts, both civil and criminal, and considering and conferring with other organizations and with nominating committees regarding the fitness of candidates for judicial office. The committee entered upon its new duties with marked energy and ability, and has in each year since continued to give those vitally important subjects prolonged and enlightened consideration. In 1915, a determined effort was made by the committee to secure the renomination by the leading political parties of Justices John Proctor Clarke and Sam-

Judiciary Committee

uel Greenbaum to the Supreme Court in the First District. A Non-Partisan Judiciary Committee was appointed and the desired object was accomplished. A similarly successful and State-wide effort, in which the State Bar Association and the New York County Lawyers' Association shared, to secure the renomination and reëlection of Judges Chester B. McLaughlin and Benjamin N. Cardozo to the Court of Appeals, was made by the Judiciary Committee in 1917, and in 1918 Justice Victor C. Dowling's renomination in the First District by the two leading political parties was brought about. In 1919, when the terms of Justice Joseph E. Newburger of the Supreme Court, a Democrat, and Justice Richard H. Smith of the City Court, a Republican, were about expiring, the committee's attempt to obtain their renomination by both parties failed owing to the Democratic party's refusal to nominate either Justice Newburger or Justice Smith. Once again the issue was taken by the Association to the people, and again the people vindicated the principle by reëlecting both of those faithful judges. At the same time most of the other candidates on the Republican ticket were elected. So for the fifth time, at least, the judicial issue which the Association raised had pronounced political results. The latest judicial question with which the committee has dealt was urging upon the Governor with successful result the reassignment to the Appellate Division of the First Department for the term beginning January 1, 1920, of Justice Frank C. Laughlin. All of the committee's action was, of course, taken with the full approval of the Association, but the labors of the committee have been largely increased in these later years by

the necessity of compliance with the complicated provisions of the Direct Primary Law.

It has been suggested repeatedly by the Judiciary Committee that decidedly better results could be obtained at the polls if the names of the candidates for judicial office were printed on the ballots separately from the party columns. It is probable that such a modification of the Election Law would be beneficial, but in the nature of the case the control by the bar over judicial nominations and elections is limited. It has always been the purpose of the Association to refrain from taking any partisan attitude and from entering into any purely political question. The judicious exercise of the power of professional opinion seems to be the strongest available influence. The fact is the present method of selecting candidates for judicial office, whether through the operation of the direct primary or by the choice of party conventions, is irremediably imperfect. As between the primary and the convention the advantage apparently lies with the convention, since the direct primary, in its present form, is not fitted to bring forward desirable candidates for the bench, and where nominations by the leading parties are obtainable, the primary requirements are needlessly involved. It seems difficult to escape the conclusion with which the Association began its existence that the administration of justice in this State would be much more effectively carried out if all the higher judicial officers were appointed by the Governor, either acting alone or with the concurrence of the Senate. In the present state of the popular mind, however, such a refo m seems hardly practicable.

The correction of misconduct on the part of lawyers themselves is a gravely important function of the Association. Shortly after its organization, a Committee on Grievances was created, charged with the hearing of all complaints against members of the Association, and also all complaints which might be made in matters affecting the legal profession, the practice of the law and the administration of justice. These powers were not deemed by the committee to have sufficient breadth to include charges against lawyers who were not members of the Association. In the early days charges against members of the Association were almost unknown, and it was not until 1884 that such a complaint was made to the committee. Within the memory of some of the oldest members, the case of a noted lawyer who by a curious misunderstanding was asked to sign the original organization call, but who was believed to have been implicated in various unsavory judicial performances which were disclosed in the impeachment trials of the judges, was informally considered, but since he had become a member subsequent to the conduct complained of, it was not deemed advisable to attempt to discipline him on that ground. For similar reasons of expediency the conduct of certain non-member lawyers disclosed by the judiciary proceedings was not further investigated. But the Association stands ready always to defend its members when unjustly attacked. In one famous case arising in 1876, a distinguished member of the Association, and one of its founders, Mr. Charles O'Conor, appealed himself to the Association for an investigation of charges that had been made against

Discipline of lawyers

Committee on Grievances

him in some of the newspapers of the city. In substance, these criticisms were first, that having accepted the office of counsel for the plaintiff in the notorious Forrest divorce suit and agreed to act without compensation, and having received from various citizens of the city complimentary testimonials under the belief that his successful labors in the suit were gratuitously performed, he had subsequently presented and collected a bill for his services, and second, that this bill was exorbitant. Upon receiving Mr. O'Conor's appeal, the Association appointed a committee to arrange a tribunal to investigate the charges. This committee selected five prominent citizens of the city, of whom the chairman was the Honorable John A. Dix, former Governor of the State, and after a hearing, this tribunal unanimously exonerated Mr. O'Conor on both counts. The first charge was disproved by the testimony of competent witnesses, including his client in the case, and it was found that as to the second charge he had received for his services, covering a period of nineteen years and resulting in the vindication of his client's fair name and the recovery for her of property of the aggregate value of $221,000, the very moderate compensation of $13,000, in addition to reimbursement of $25,000 advanced by him to his client for her support pending the litigation.

In 1884 the Committee on Grievances was specifically authorized by an amendment of chapter XIV of the by-laws to investigate charges of fraud and of gross unprofessional conduct against lawyers who were not members of the Association, and against persons pretending to be lawyers. That committee was to report to the Executive Committee which, if it thought advisable, could appoint a member to

prosecute the case. This change in the by-laws made the Committee on Grievances more active. In the following year twelve complaints were investigated. Owing to the difficulty and delay experienced by the Executive Committee in securing prosecutors, the Committee on Grievances recommended in 1892 that the Association appoint one or more regular prosecutors. This suggestion was not then carried out, but chapter XIV of the by-laws was again amended in 1896, and by a further amendment in 1897 a member of the Association was appointed attorney for the committee, without pay. The business of the committee meanwhile was steadily increasing. By 1906 it had reached such size that it was deemed necessary to have an attorney devote his full time to the work. A member of the Association was chosen for that position, with a regular salary, and a downtown office was secured for the committee. By 1910, these quarters were outgrown. As the lease which the Association had made of Nos. 39 and 41 West Forty-third Street was to expire the next year, it was arranged to provide there accommodation for the committee. Not only did this give much more spacious and convenient headquarters for the committee, its staff of attorneys, stenographers, and clerks, and for witnesses, but it also supplied a more dignified court room for the weekly hearings of the committee.

Meanwhile, charges which had been preferred to the committee against a city magistrate, were investigated and presented to the Appellate Division. After a hearing by that court the magistrate was removed from office.

Broader powers having been conferred on the committee by the by-law revision of 1910, charges made in

1913 against a Supreme Court justice in this district were, at the request of the Governor of the State, investigated by the committee. With the approval of the Executive Committee and by direction of the Association, the testimony in support of the charges was presented to the Governor and by him laid before the Legislature. The Joint Committee of the Senate and Assembly, however, after a hearing, dismissed the charges.

In the last ten years the powers of the committee have become better known and its labors have largely increased. In the courts and with the public it has come to be a matter of course to refer to the Association any questionable conduct of lawyers. The number of complaints against attorneys annually investigated by the committee during that period has ranged from five hundred and fifty-one to nine hundred and seven. In addition, more than a hundred complaints involving the administration of justice have been passed upon. Since 1905, more than eight thousand five hundred complaints against attorneys have been considered, and two hundred and sixty lawyers, in proceedings instituted by the committee, have been disciplined by the Appellate Division by disbarment, suspension from practice or censure. All this, of course, involves heavy annual expense, but it seems to be the unanimous opinion that it is the duty of the Association to pursue this important work with the utmost efficiency.

A summary of the usual procedure of the committee may be of interest. When a complaint against an attorney is presented, it receives preliminary examination by the attorney for the committee. If he deems the case to be one requiring investigation, a formal charge is drafted

and served upon the lawyer named in the complaint. A hearing is then had before the committee, at which the respondent is allowed to be represented by counsel and to cross-examine all witnesses. In the large majority of cases this painstaking consideration of the complaint establishes its insufficiency or brings about a satisfactory accommodation of the dispute between the attorney and his client. But if the evidence seems to justify further prosecution of the complaint, the record is submitted to the Executive Committee, and if that committee concurs with the Committee on Grievances, a petition in the name of the Association, setting forth the circumstances disclosed to the committee, is presented by its attorney to the Appellate Division of the Supreme Court. Notice of this application is given to the attorney involved. If the Appellate Division is of the opinion that a proper case has been made out, and no issue of fact is raised by the respondent, an order of disbarment, suspension or censure is entered. Where material facts are put at issue, the proceeding is usually sent to a referee. The parties having been heard before that official, he files a report, and on the application to confirm that report the Appellate Division, after again hearing counsel, renders its decision.

So thoroughly and with such discrimination is the difficult work of the committee performed, that its presentation of charges to the Appellate Division is ordinarily followed by that court's discipline of the accused attorney. The Association, acting through the committee, may thus fairly be regarded as an arm of the Supreme Court. Frequent appeals are taken or sought to be taken by the convicted attorney to the Court of Appeals, but in only one

case has the order of the Appellate Division been reversed. In one other case the appellant applied to the Supreme Court at Washington for a writ of *certiorari*, but this was denied.

In conducting this heavy mass of trial and appellate work, the attorney of the committee, who has ably filled that position for fourteen years, frequently needs the aid of counsel. Other members of the Association generously volunteer for this purpose, and in almost every case without fee.

Among the important accomplishments of the committee have been the permanent establishment of a higher standard for professional conduct. Abuses that had flourished for years without criticism were corrected. One of the first acts of the committee was to make clear the misconduct of using criminal processes to force a settlement in a civil suit. False or careless affidavits by attorneys, or the presentation of affidavits which were known to be false, resulted in a number of disbarments, and diminished wrongs of that sort. In the same way, the establishment of the principle that a lawyer might be disciplined for allowing his client to testify, on a trial, to what the lawyer knew to be false, has also had beneficial results. The fact that a lawyer could be disbarred for misbehavior, even though the relation of attorney and client did not exist between him and his victim, was another valuable demonstration of the committee. The conduct of accident suits against the street railway companies produced evils of two kinds—unprofessional methods in instigating such suits, and the improper treatment by the defense of witnesses for the plaintiff. These abuses

had become a public scandal, and their abatement by the committee was a genuine service. Many attorneys have been stricken from the roll whose admission was secured by false representations. The statute granting immunity to a wrongdoer who testifies for the State has been held not to shield a lawyer from disbarment for the acts as to which he has testified. All of this has been pioneer work. Other corrupt practices have been either radically reduced or completely stopped. The committee has not only acted as an efficient prosecutor, but it has elevated the actual standards of the profession.

Nor has the effect of these endeavors been confined to the City of New York. The committee is frequently consulted by the representatives of other bar associations, and its standards of professional conduct and its disciplinary procedure have been described in scores of replies to inquiries on those subjects. In this way the influence of the Association's work has been felt all over the country.

No record of the activities of the committee, however, would be complete which did not show the large amount of time which the members give to their duties. Besides all their individual investigation and study, they are in the habit of sitting every Thursday afternoon in their court in Forty-third Street, taking testimony and considering cases. During July, August, and September, these regular meetings are suspended, but all-day sessions are held during one entire week of July for the purpose of clearing the calendar of pending cases. In the extent of its labors, the Committee on Grievances surpasses every other committee of the Association. But of all the members of the committee, the present Chairman, who has

acted in that capacity continuously since 1902, has devoted himself most assiduously and constructively to the committee's task. To him and to his associates the highest praise is due. They are laboriously performing, week after week, and with conspicuous efficiency, a public duty of the greatest consequence.

Another broad field of activity for the Association has included changes in the body of statutory law. Affirmatively this work involves the devising of needed additions to the existing statutes, and negatively the much greater task of criticizing and opposing the incessant attempts to enact undesirable laws. At the very outset a standing Committee on the Amendment of the Law was provided, which has since labored to carry out that essential branch of the Association's work. During the early years, there was no legislation of special moment to occupy the attention of the committee, but in 1880 it was faced with the proposed enactment of the so-called Field Civil Code. The threatening aspect of this scheme to change our legal system so radically, and the complexity of the subject, may justify a somewhat detailed statement of the episode.

Supervision of changes in statutory law

In 1828 New York took an important step by including in a general revision of existing statutes, a codification of certain parts of the substantive law, notably in respect to land tenure, uses and trusts and other related subjects. The common law of England on this subject had slowly developed through the centuries, and it was felt by the revisers that in our new and different political and social conditions, the precise application of that mass of feudal growth to our own form of government should be defined.

The result was the Revised Statutes of 1828, and these remain in substance in our present body of statutory law and have been adopted in several of the Western States. It may be remarked, in passing, that the codification phase of the Revised Statutes of 1828 was vehemently opposed by James Kent, who, having reached the age of sixty years in 1823, had been compelled by the Constitution then in force to retire from the bench. The former Chancellor's views were shared by the great majority of the bench and bar. But the ardor of the three youthful and brilliant revisers overcame all opposition, and the draft of the general plan of revision submitted in 1825 by the youngest of them, Mr. Benjamin F. Butler, who was then twenty-eight years old, was adopted by his colleagues and ratified by the Legislature. Here, again, it may be doubted whether an effectively organized bar would not have prevented the inclusion in the revised laws of any attempt at codification.

With the revision of our Constitution in 1846, fresh impetus was given to the general codification idea, by a direction that the Legislature appoint three commissioners of codification. That appointment was made in 1857, the Messrs. David Dudley Field, Wm. Curtis Noyes, and Alexander W. Bradford being named. In 1865 they submitted their final report of a proposed Civil Code, and for nearly thirty years this was almost annually pressed upon the Legislature for enactment. During all of that time Mr. Field was the protagonist of the measure, which was generally believed to have been substantially his work, and bent all of his energies and varied abilities in its behalf. It failed of

Opposition to Field Civil Code

adoption after several successive legislative attempts, and for a number of years was not pressed. In 1880, under the apparent sympathetic influence of the work of the then Commissioners of Statutory Revision, Mr. Field succeeded in getting his Code through both Houses, but it was vetoed by Governor Robinson. A somewhat altered form of the measure was introduced in the legislative session of 1881. This being brought to the notice of the Association at its regular meeting on March 8, 1881, by the Committee on the Amendment of the Law, the committee was instructed to consider the bill and report to the Association on March 15th. The committee then reported that while a careful revision of the existing statutes of the State would be of unquestionable benefit, an attempt to codify successfully the entire body of the common law would be impracticable and of great damage to the general public. This report was adopted by the Association, and in view of the capital importance and intricacy of the pending bill, a larger special committee was directed to appear before the proper legislative committees and urge the rejection of the proposed Code. For ten successive years the special committee faithfully carried out its instructions and at the end of each year reported to the Association. This report was invariably adopted and as a rule ordered printed and distributed throughout the State. Before the special committee could be heard in the 1881 session the Assembly passed the Code bill by a vote of eighty-three to three. By arrangement with the Judiciary Committee of the Senate a hearing was held April 21st and arguments against the bill were made by representatives of the Association and

in its favor by Mr. Field. As a result the bill was not reported out by the Senate committee before the Legislature adjourned in July. In December an urgent appeal for careful consideration of the proposed Code was sent to each member of the Legislature of 1882. Although the special committee was heard in the latter year by the Judiciary Committee of each House, the bill was reported favorably and subsequently passed by each House. An earnest remonstrance was addressed to Governor Cornell and he vetoed the measure. A year later, in October, 1883, the third annual report set forth that while elaborate and prolonged argument against the Code was made in the spring of that year in both legislative committes, each committee, by a divided vote, reported the bill favorably, but that no action on the bill had been taken by either House. In the 1884 session the contest was renewed over a somewhat modified Code. The Association's opposition was even more analytic and vigorous. The Assembly committee did not report the bill, and while it was reported favorably by the Senate committee it was defeated in the Senate. From the report of the special committee, presented in December, 1885, it appeared that another active contest had taken place in the 1885 Legislature. The Assembly committee reported the bill favorably, but the Assembly itself, after a discussion which revealed for the first time a conscientious and an intelligent consideration of the merits of the controversy, voted against the measure. The Senate committee also reported the bill favorably, but after its defeat in the Assembly no further action was taken by the Senate. The sixth annual report of the special committee submitted on December 14, 1886,

and the seventh annual report on December 13, 1887, recounted in each case the renewed efforts of the committee. The eighth annual report presented December 8, 1888, showed that earlier in that year another battle royal on the proposed Code had taken place in the Legislature. Repeated arguments were made before the Joint Judiciary Committee of the two Houses. Briefs in opposition were prepared by several members of the special committee and a thorough canvass made of the Legislature. Finally the measure was passed in the Senate without a vote to spare, but was subsequently defeated in the Assembly by a substantial majority. While it was then apprehended that the adoption of the Code would be urged upon the next Legislature, that apprehension was not realized. The special committee was nevertheless continued in December, 1889, when it made its ninth annual report. Its tenth annual report, presented in December, 1890, proved to be the last. No further attempt to enact the measure has since been made.

This chapter in the history of law demonstrates the learning and devotion of the Association's representatives. They succeeded in saving the people of the State from an enactment that instead of clarifying would probably have brought our substantive law into lamentable uncertainty, and swamped the courts with litigation. Only the lawyers could have benefited from such a labyrinth, and to their credit it should be noted that it was an association of lawyers that year after year stalwartly opposed the scheme until it was finally buried. A complete record of the Association's treatment of the measure during those ten years when its enactment hung in the balance, would fill

volumes. Some of our best minds gave the Code exhaustive study. Professor Theodore W. Dwight was for several years chairman of the special committee. Mr. James C. Carter, another member of the committee, was its unofficial leader throughout the contest, and again and again, by oral argument before legislative committees and by briefs, brought all his learning and superlative force to bear in preventing what he believed would be a public calamity. Other members of the committee and of the Association at large prepared monographs on various phases of the bill, and these arguments were printed and distributed throughout the State. The vastness of the subject, the research which it required, and the vigor with which the Code was pushed in political and legislative circles, gave its opponents a severe task, and it was by a narrow margin that they at last triumphed. Towards the end of his professional career, Mr. Carter recalled some features of that struggle. In the meantime he had broadened his inquiry into this subject of codification by making a philosophical study of the distinctions between written and unwritten law which he subsequently entitled "Law: Its Origin, Growth and Function." This he had intended to deliver in the form of a course of lectures before the Law School of his Alma Mater, Harvard University, but his untimely death in February, 1905, prevented. The manuscript of the lectures was published by his executors, and is a noble monument to that surpassingly great lawyer and man.

The doctrine of codification is a rather tangled web. New York State's attitude on the subject has not always been consistent. By the revision of 1828, as we have

seen, an attempt was ventured to codify the rules as to land tenure and other related subjects, and while this attempt was copied in several other States, it can hardly be said with confidence, after nearly a century of trial, that the attempt was either wise or successful. That learned law author, John Chipman Gray, was decidedly of the opinion that the experiment was a failure. In his work on The Rule Against Perpetuities (Third Edition, 1915), he says that whereas, before the adoption of the Revised Statutes there was only one reported case in New York involving the remoteness of a limitation, since that time there had been more than four hundred and seventy of such cases. A Penal Code, too, has been adopted in New York, but as that seeks to define so many *mala prohibita* as well as *mala in se*, it rests on a somewhat different basis. On the other hand, the proposed Code of Evidence has repeatedly been disapproved by this Association, and still remains unenacted. The Civil Code adopted in California in 1876 was largely based on the Field Code, but was afterwards criticized unsparingly by the most distinguished legal writer of that State, Professor John Norton Pomeroy. Yet California's experience did not deter several other States from making a similar experiment. While theoretically the argument in favor of codification so emphatically presented by its leading apostle, Bentham, and afterwards by Austin and other writers, is persuasive, the practical difficulties in the way of effective execution have, as Austin admits, hitherto proved insurmountable. As a mere matter of verbal expression, even temporary success seems hopeless, while in the case of the common law we have, of course, the im-

Doctrine of codification

mense added difficulty of accommodating permanent statutory definitions to the spontaneous development which has always characterized that body of law. So that the problem varies in different jurisdictions. In France, where special political considerations seemed at the time to justify the adoption of the Code Napoleon, it cannot be said that the measure has been wholly successful in reducing the uncertainty of law. The disregard by the Court of Cassation of the doctrine of *stare decisis* only magnifies this uncertainty. The Justinian Code and Pandects, as well as the Prussian Code, though for different reasons, have been termed equally vulnerable on the score of heterogeneousness and uncertainty. Nevertheless, the demand for codification in substitution for judiciary law has in recent years again become more audible, and no one can say where it will lead. But upon the whole, and especially from the point of view accessible a generation ago, and having in mind the proved imperfections of the Field Code, it may, we think, safely be repeated that the State owes a lasting debt to this Association for its protracted and successful struggle against that particular form of codification.

Committee on Amendment of the Law

While the special committee on the Civil Code was pursuing its long task, the regular Committee on the Amendment of the Law devoted itself to the mass of general legislation that was sought at Albany and Washington. The extent of this labor necessitated from time to time further subdivision of the duties originally entrusted to the committee. As a result, it is now confined to New York legislation and procedure. In 1906 a standing Committee on Federal Legis-

lation was created, in 1910 a standing Committee on Law Reform, and in 1914 a standing Committee on Constitutional Amendments. During each session of the State legislature and for the thirty days subsequent thereto, when many bills are before the Governor, the Committee on the Amendment of the Law frequently meets to pass on pending measures. In the earlier years it was the habit of the committee to adopt and send to Albany memoranda expressing the views of the committee which such consideration had developed. Four copies of these memoranda were prepared,—one for the records of the committee, one for the Governor, and one each for the Chairman of the Senate Committee and the Chairman of the Assembly Committee, to which, respectively, the bill had been referred. This method did not produce entirely satisfactory results in bringing the memoranda to the attention of the legislative committee while the bill was under discussion. As a rule, however, the Governor gave careful consideration to the memoranda, and in passing on the so-called thirty-day bills frequently considered additional memoranda submitted by the committee. In this way many objectionable bills were defeated. Later the committee had a representative at Albany to whom these memoranda were sent, and whose duty it was to present them to the Governor and to the proper committees. This proved a more efficient method, but, like its predecessor, failed to acquaint the individual members of the Legislature with the views of our committee. To supply this lack, the present bulletins of the committee were devised, and for several years they have been sent weekly to every member of the Legislature and

to the leading newspapers. These bulletins are printed on good paper, skillfully arranged in typography, well indexed, and state tersely the scope and legislative history of the bill and the position of the committee in regard thereto. The many communications received by the committee from members of the Legislature show that the bulletins are a useful adjunct to the work of the committee in averting bad and securing good legislation. On the historical side, too, they have distinct and permanent value. The efforts of the committee are constantly expanding and exert a highly beneficent influence on the legislation of the State.

Committee on Federal Legislation

The Committee on Federal Legislation renders a less active service. The incidence of Federal legislation germane to the functions of the Association is, of course, narrower than is the case with State legislation. Nevertheless, certain important subjects frequently present themselves to the committee. Its first effort was to secure an increase of the salaries of Federal judges. It coöperated with other bar associations and presented the need to various senators and representatives, but for the time being without success. Later some relief was granted. Proposed amendments to the Bankruptcy Law are of constant recurrence. The expedition of legal business in this district has been favored by the appointment of additional judges and by the amendment of the Federal law so as to permit district judges to be transferred temporarily from other districts to sit here. The reform of the equity rules applicable to Federal courts has occupied much attention, and now that the Supreme Court has formulated a set of rules which materially im-

prove Federal procedure, it is hoped that a similar reform of Federal procedure in common law cases may be accomplished.

The Committee on Law Reform began its career in December, 1909, as a special Committee on the Simplification of Procedure, and then made over sixty recommendations covering that subject, most of which were adopted by the Association. In 1912 much legislation in effectuation of these recommendations was prepared by the committee and introduced, as a result of which twenty-seven of the recommendations were embodied into law. A very valuable contribution by the committee was the establishment of the principle of a single trial and a single course of appeals in any civil controversy. This project had had the aid of the Court of Appeals and the Appellate Division and was adopted by the Legislature. It put an end to the evil of repeated trials and repeated appeals in the same litigation. In other ways, too, this committee devotes itself to constructive work in improving both the substantive and the adjective law, and in the comparatively few years of its existence has accomplished much good. The effective coöperation which has recently been established between the committee and the Law Reform Committee of the State Bar Association has significance and large promise.

Committee on Law Reform

In 1915 the State had a Constitutional Convention for a general revision of our fundamental law. To meet this emergency the Association appointed a special committee of twenty-one members to consider what were desirable amendments to the Constitution in the domain of law, and to decide how

Constitutional Convention of 1915

they should be brought before the Convention. The special committee sub-divided itself into seven committees of three members each for the consideration, respectively, of the selection, tenure, and removal of judicial officers, the Court of Appeals, the intermediate appellate tribunals, the Supreme Court, the Surrogates' Courts, the inferior courts, and the criminal courts. Each sub-committee investigated the particular subject presented to it and reported thereon to the whole committee. After consideration the whole committee laid the matter before the Association at a meeting on March 9, 1915, and recommended sixteen separate resolutions, in which were summarized the results of the committee's conclusions. These resolutions were adopted by the Association. They included, it is interesting to recall, a recommendation that the judges of the Court of Appeals and the justices of the Supreme Court should thereafter be appointed by the Governor, with the advice and consent of the Senate, and should no longer be elected by popular vote. This renewed the recommendation which the Association unsuccessfully made to the people in the autumn of 1873. All other judges, both of courts of record and of courts not of record, it was further recommended, should thereafter be either appointed or elected, as the Legislature might from time to time prescribe. While many of the recommendations of the Association bore fruit in the revised Constitution as adopted by the Convention, these two vital reforms were not accepted. As will be remembered, the people rejected entirely this proposed new Constitution in November, 1915.

The Committee on Constitutional Amendments since

1914 has had a general supervision over changes in the State Constitution. With the exception of the Constitutional Convention of 1915, this subject has not been active. The committee considered carefully the work of the Constitutional Convention as finally adopted, and while concurring in the recommendations of the special committee of twenty-one, concluded that the new Constitution as proposed included many desirable changes in our governmental system and would be distinctly beneficial to the people of the State. In 1917, after Congress had enacted bills for the submission to the various States of the proposed Eighteenth Amendment to the Constitution of the United States, the committee, with the authority of the Association, protested to the New York Legislature and to the Congress against the adoption of the amendment in the form proposed on the ground that the provision that the Congress and the several States should have concurrent jurisdiction in enforcing the amendment by appropriate legislation would create grievous confusion of power and conflict of jurisdiction. The Congress was urged to rescind the joint resolution as adopted and to pass a joint resolution submitting the proposed amendment to the State legislatures in a wiser form. This protest, however, was heeded neither by the Congress nor by the Legislature.

Committee on Constitutional Amendments

Other regular committees of the Association are those on Courts of Inferior Jurisdiction, on General Affairs, and on Legal Education. The special committees now in office include one on Code Revision, on Association Periodical, on Increase

Other committees of Association

of Membership, on International Law, on War Records, on Lectures, on Dinners and on Smokers.

Diminution of activities in 1917–1918

The activities of the committees were naturally curtailed in the years 1917 and 1918. The war brought many members of the Association into the military and naval service. Many others joined the Legal Advisory Board for the City of New York, the Auxiliary Boards organized in the several Boroughs or the Local Law Boards of Associate Members. These various boards were manned by about six hundred lawyers, and as it was believed that several thousand additional lawyers would be required for the prompt and successful execution of the Selective Service Law, the Association made an earnest appeal to the members in December, 1917, to give their services. This appeal met prompt response, and the bar of New York, in common with the bar throughout the country, did an inestimable service in bringing into fair and wonderfully effective operation the most skillfully devised war draft that the world has ever seen enforced.

Importance of committee work

From the nature of the Association's diversified work much has to be delegated to committees. In all more than two hundred members of the Association are serving as its officers or on its committees. At the sacrifice of much leisure and frequently of personal convenience, they freely give to the public welfare, which the Association was formed to promote, a vast amount of expert aid. To some of them and in particular to several of the officers and of

the committee chairmen, this service is almost an occupation in itself. To all of them the community owes a lasting debt.

Library of Association

Though not mentioned in its charter, the establishment of a working library for the members was a consideration of lasting importance to the Association. At the first meeting in March, 1870, a "century fund" was provided by the contribution of $100 each by a hundred members. A Library Committee was appointed, and by January, 1873, six thousand volumes had been acquired, two-thirds by purchase for about $20,000, and one-third by gift. Since that time the growth of the Library has been constant, not only in the number of volumes but in their scope and intrinsic value. When a well-rounded collection of 38,762 books had been made in 1892, a complete catalogue was printed, which still has bibliographic value. By 1903 the number of volumes had grown to 56,911, and a modern card catalogue was prepared, which has continuously been kept up to date. The collection now numbers more than 129,000 bound volumes, in which are included perhaps more than that number of carefully selected and catalogued pamphlets. About two-thirds of the volumes have been purchased at a total cost approximating $432,000. The remaining third was acquired by gift. This library is strictly limited to books on law or on subjects germane to law, and in extent and character constitutes one of the three greatest law libraries of the country. The other two are the Law Division of the Library of Congress and the library of the Law School of Harvard University. The library at Washington owes

Library Committee

many of its huge collection of books to the system of exchanges and to the compulsory deposit with it, pursuant to the copyright law, of a copy of every volume registered under that law. The Harvard library is primarily a collection for scholars, and has been described by Professor Dicey, of Oxford University, as the most nearly perfect collection of the legal records of the English people to be found in any part of the English-speaking world. The Association's library in its turn was intended primarily for the use of active practitioners, and the successive Library Committees have kept this purpose steadily in view.

While thus thoroughly practical in its composition, the library also presents a fertile field for the research student. It is unusually rich in American reports and digests, state, federal, and colonial; British reports and digests, as well as the reports and digests of British dominions and colonies; English and American treatises on law; American statute law running back to the earliest colonial days; a unique collection of the records and briefs in cases heard in the appellate courts, both federal and New York State; a vast amount of public documents issued by the city, state, and federal governments and departments; Spanish, French, Italian, German, Austro-Hungarian, Scandinavian, Belgian, Dutch, Swiss, and Portuguese statutes, legal decisions and treatises; a constantly growing collection of Latin-American publications on the same subjects; works in large number dealing with the Roman law, and a valuable library upon the subjects of treaties, international law, political science, the history of law and legal biography. In a word, it has been the undeviating aim of the Library Committee that under one roof all

the culture that literature can contribute to the student of law and government, may be accessible.

To aid it in its task the committee regularly seeks the advice of selected experts in the different countries, jurisdictions, and subjects involved, and in other ways strives to keep abreast of the most advanced library methods. Long service is the rule with members of the committee, and unity of purpose has thus been admirably preserved. During these fifty years there have been only six chairmen, ex-Judge James Emott, Professor Theodore W. Dwight, Mr. Hamilton Odell, ex-Surrogate Daniel G. Rollins, Mr. Albert Stickney, and the present incumbent, Mr. Edward C. Henderson, who has already served for sixteen years. The Association has been rarely fortunate in securing their scholarly and far-sighted devotion to what has been to each of them a labor of love. For the distinguished success of their and their colleagues' efforts, our most grateful and enduring appreciation is due.

In connection with the library, fifteen conference and study rooms are available for those members who wish privacy in the prosecution of their work. A librarian of national reputation, three capable assistant librarians and a staff of eighteen attendants administer the collection in a way that gives general satisfaction.

Other educational work of Association

For a number of years it has been in the minds of many members that in addition to the large amount of professional and research work carried on in the library, the educational side of the Association should be more highly developed. We have a great equipment and a valuable corps of instructors both at

home and in other parts of the country, whose services might be obtained. The intense life which the active lawyer leads, however, leaves little time for collateral work. The centuries during which the law has been an exact science have made conferences for educational purposes less imperative than has been the case, for example, with the medical profession. An association of doctors usually devotes substantial effort towards an increase of medical knowledge by periodical discussion and scientific tracts. It is gratifying to notice that in recent years this side of a lawyer's life has received growing attention. The American Bar Association and the New York State Bar Association in especial have made their annual meetings fruitful in the study and discussion of legal problems. This Association, too, now has a special committee on lectures, and that form of education has had interesting illustration, both as a part of the regular meetings of the Association and on other occasions. Mr. Paul Fuller gave an illuminating account in 1913 of the history, practice, and ideals of the French bar. This was followed the next year by a similar discourse on the Italian bar by Avvocato Gastone del Frate of Rome, and by a suggestive enumeration of some of the desiderata of a state constitution by the Honorable William H. Taft. In the spring of 1915 Mr. Presiding Justice Ingraham, in anticipation of the Constitutional Convention to be held that summer, delivered a timely address on the proposed amendments to the judiciary article of the State Constitution. The following year a series of papers was read before the Association by several distinguished lawyers on the preparation of corporate securities, railway mortgage foreclosures, corporate

FORTY-THIRD STREET FAÇADE

reorganizations, the Sherman law, the Federal Trade Commission, the Clayton act, and Public Service Commissions. These papers were subsequently collected and published in book form under the title of "Some Legal Phases of Corporate Financing, Reorganization and Regulation." This volume is an unusually significant contribution to the literature of the subject, and supplies in attractive form much valuable information and comment which are nowhere else accessible. The latest examples of this educational work have been a series of afternoon lectures at the Association by Mr. Mark Eisner on the intricacies of the Federal income tax law, and a discussion by Mr. Mark Graves of the administrative features of the recently enacted State income tax. The experiment so successfully inaugurated should be still further pursued.

Fraternal relations with other lawyers

From its origin the Association has cultivated fraternal relations with the bar of other jurisdictions. An early exhibition of the comradeship between lawyers was given in November, 1871, when the Association raised funds by subscription and purchased for presentation to the lawyers of Chicago, to repair in part the destruction of their libraries by fire, a complete set of the New York Statutes and Reports. In May, 1906, the same gift was made by the Association to the bar of San Francisco in sympathetic recognition of their loss by earthquake. Our relations with the New York State Bar Association are particularly intimate. When the State Association has its annual meeting in this city its headquarters are made at the building on Forty-fourth Street, and several important social functions have been

conducted jointly by the two institutions. The same spirit of coöperation is exhibited in questions that are statewide in their operation. From time to time the various committees of the Association confer with bar associations in New York and in other States with respect to subjects of general interest, and endeavor by every form of coöperation to accomplish the greatest public benefit and to encourage to the utmost the solidarity of the profession.

Social intercourse

One of the chartered purposes of the Association was the cultivating of social relations among its members, and this supplied another cogent reason for acquiring and maintaining a convenient club house. Thirty or forty years ago members frequented the club house rather more generally than they do now. In the very early days, when the membership was small, the President once or twice received the members at his home. The meetings of the Association were well attended. When they were over, the members lingered for social intercourse. The leaders of the bar were usually there, and thus had opportunity of making acquaintance with the younger lawyers. Good talk prevailed and greater intimacy was possible. The complexity of our present social life leaves the members less time to attend meetings. The principal social events have thus come in the form of especially arranged entertainments in honor of distinguished members and strangers. Mr. Justice Blatchford, on his appointment to the Supreme Court in 1882, was our guest. Presiding Justice Noah Davis and Judge Hooper C. Van Vorst, on their retirement from the bench in 1886, were also entertained, as were the judges of the Court of

Appeals in May, 1888. On January 22, 1889, Mr. William Allen Butler presented to the Association portraits in oil of his father, Benjamin F. Butler, of John Duer, and of John C. Spencer, the three distinguished revisers of the statutes of the State, and by special invitation delivered a learned and felicitous address commemorative of their lives and great work. When Mr. Cleveland was elected a member of the Association on the completion of his Presidential term in 1889, he received a special welcome. In May of that same year, the centenary of the adoption of the Federal Constitution was celebrated, and the Chief Justice and Associate Justices of the United States Supreme Court were the guests of the Association. In 1895 the 25th anniversary of the founding of the Association was marked by a reception to its former Presidents. In the summer of 1896 Lord Russell, then Lord Chief Justice of England, was our informal guest. A sad but gratifying reminder of that visit is the marble bust of Lord Russell, which was given to the Association in 1904 after his death, by the Memorial Committee of the English Bar, and which was intended also as an expression of the cordial and fraternal relations existing between the bar of England and the bar of the United States. On the eve of his departure for London in November, 1899, to assume the duties of United States Ambassador, Mr. Joseph H. Choate was entertained, and again in June, 1905, on his return after six important years of public service. He repaid us, in May, 1908, with a charming address described by him as "An Informal Talk about the English Bar and Courts." In similar manner the hospitalities of the Association have been extended on different occasions,

in the form either of a reception or a dinner, to the members of the New York State Bar Association and their guest, the Right Honorable James Bryce, now Viscount Bryce, to Mr. Justice Hughes of the United States Supreme Court, to the members of the State Bar Association and their guest, the Honorable Philander C. Knox, Secretary of State of the United States, to the Earl of Reading, Lord Chief Justice of England, to M. Renè Viviani, of the special French Mission to the United States in May, 1917, to Lord Finlay, former Lord Chancellor of England, and in October, 1919, to His Eminence, Cardinal Mercier.

Miscellaneous activities of Association

The miscellaneous activities of the Association in following the career narrated above, make a long catalogue. Some of them may be briefly enumerated. They began with the appointment of a Committee on Extortions in 1872, which combated and corrected various evils that had arisen in the administration of the public offices in this city. Two years later bills were drafted making the Register of Deeds, County Clerk and Sheriff salaried officers and abolishing the system of compensation by fees. These bills were introduced in the Legislature and their passage urged, but they did not become law until 1884. The simplification of procedure and the expedition of litigated business in the courts have from the first been perennial problems for study and action. A more satisfactory system of law reporting was advocated in 1873. The elevation of the standards for admission to the bar was another reform which enlisted the early efforts of the Association and which has had constant supervision. A study of the

subject was ordered in 1875, and produced an instructive report in 1876, some of the recommendations of which were adopted by the Legislature in the latter year. The spirit of this report is excellent, and one or two of its conclusions as to the method of obtaining "a higher moral and intellectual standard in those who seek to minister at the altar of justice" might well be pondered to-day. Uniform bar examinations were urged in January, 1891, and as a result the whole subject was by statute placed in the hands of the Court of Appeals for administration. Another attempt to raise the standards of admission to the bar was made in May, 1910. In March, 1913, on a report setting forth various objections to the then prevailing method of bar examinations, the Judiciary Committee was instructed to bring the criticism to the attention of the Court of Appeals. The following month that court sustained the objections and entered an order directing the State Board of Law Examiners to change their procedure accordingly. The subject now receives special attention from the standing Committee on Legal Education, which was created in 1918, as a revival of its short-lived predecessor of 1871, and which has recently submitted to the Association a definite plan for raising the intellectual and moral standards of applicants for admission to the bar. It is devoutly to be hoped that this tentative plan will point the way to a betterment of the lamentable existing conditions which the committee has disclosed. The American Bar Association also at its meeting last September discussed the subject at some length. The elaborate study of legal education in the United States begun by the Carnegie Foundation in 1913, and still in progress, is likely,

when completed, to throw additional light on this difficult problem. Amendments to the Constitution of the State have from time to time been considered and acted upon by the Association, either directly or after consideration by a special committee. Early in its career the principle was adopted that the Association in its collective capacity would not consider amendments which concerned the general political economy of the State, but did not fall within the special field of the corporation's chartered purposes, and this principle has in the main controlled the Association's attitude towards the successive amendments that have been proposed. Since 1914 that subject, too, has been delegated to a special standing committee. The merger of the Superior Court of the City of New York and the Court of Common Pleas into the Supreme Court was proposed by the Association in 1876 and pressed upon the Legislature until the change was effected by constitutional amendment in 1896. As early as 1873 the reduction of the salaries of the judges of the Superior City Courts had been condemned by the Association, and later attempts to impair the dignity and jurisdiction of those courts were opposed. In the same spirit the powers of the Appellate Division of the Supreme Court have been jealously guarded. A scheme of marriage licenses was first recommended to the Legislature in 1886, and in 1907 was enacted into law. Greater care and system in handling and guarding the irreplaceable court records of the county have been urged by the Association for twenty years or more, but so far unavailingly. A kindred problem, an adequate court house, has interested the Association for almost as long and quite as fruitlessly. A clarifica-

tion of the method of indexing deeds and mortgages was advocated in 1882, 1886, and 1887, with a consequent amendment of the law in the last-mentioned year. Short forms of deeds and mortgages were subsequently advised by the Association, and in 1890 were adopted by the Legislature. The more radical reform embodied in what is known as the Torrens System for the registration of land transfers was advocated in the Association until it became law in 1908, and its subsequent amendment to make it workable has engaged the repeated effort of the Committee on the Amendment of Law. In 1878 the establishment of a Federal Court of Appeals was proposed to Congress, and this proposal was renewed from time to time until it met with success in the establishment in 1891 of the United States Circuit Courts of Appeal. In the same way in 1884 the adoption of a National Bankruptcy Law, to take the place of the one repealed in 1878, was urged upon Congress. It was not until 1898, however, that the law was passed. In 1901 a proposed United States Penal Code was analyzed and a disapproval thereof forwarded to Washington. The Association's condemnation of political contributions by candidates for judicial office was emphatic and had marked influence in checking a grave evil. The Penal Law now expressly prohibits both the solicitation and the making of such contributions. With the same solicitude for the honor of the bench, the Association declared in 1903 that it was incompatible with the dignity and independence of the judiciary that an important judicial office should be held concurrently with an important office in a private corporation whose affairs were likely to be the subject of consideration by the court of

which that judicial officer was a member. In 1904 the Association recorded its hearty commendation of the proposed treaty of arbitration with England, but this measure did not succeed in gaining the requisite approval of the United States Senate. In 1910 a disapproval of the proposed recall of judges and of judicial decisions was emphatically registered. A proper amendment of the State Constitution so as to permit the enactment of a workmen's compensation law was recommended in 1912. In 1916 the Executive Committee laid before the Speaker of the House of Representatives the serious question affecting the administration of justice under our constitutional system which had been raised by the pending proceedings taken by the House against the United States Attorney for the Southern District of New York on the motion of the representative against whom an indictment had been found in that District. Finally, under this head, the Association in January, 1920, by a divided vote, registered its condemnation of the summary action of the State Assembly in denying seats in that body, before any trial or legislative hearing, to five of its elected and sworn members, and appointed a special committee to appear before the Assembly or its Judiciary Committee, and to take such action as might be feasible to protect the principles of representative government guaranteed by the Constitution.

Having given some account of the work of the Association, we may turn to its administrative side and detail briefly the method of selecting members, the scheme of government, the successive homes of the society, and its finances.

Since the founding of the Association the selection of candidates for membership has been entrusted to the Committee on Admissions, with twenty-one members, which considers all nominations and recommends such of them as it approves. They are then voted on by ballot in the Association at its next meeting. The by-laws provide that five votes against a candidate in the committee shall prevent his recommendation for admission, and that in the ballot in the Association for his election one negative vote in five votes shall exclude him. This method of election was carefully considered by the organizers. As the Association was formed for the purpose of restoring the bar to its former condition of a learned and an honorable profession, it was thought proper to provide a test of qualifications for membership in the Association, and the method then adopted has since been preserved. In 1895 it was deemed wise to provide that a candidate was not eligible until two years had elapsed since his admission to practice, but in 1919 this term was reduced to one year. The high quality of the work of the Committee on Admissions seems to be firmly established. Membership in the Association is generally regarded both in New York and throughout the country as presumptive proof of good character and reputable standing at the bar.

Selection of new members

Committee on Admissions

In framing a general scheme for the government of the Association the founders sought to preserve the fullest expression of democratic representation that was compatible with a maximum efficiency of administration. The means employed to bring this about illustrate their wise forethought. By an in-

Scheme of government of Association

genious provision of the by-laws the Nominating Committee annually elected by the Association is specially representative of the entire membership. But there are certain modifications of the rule of annual election or appointment for all officers and committees. One of these modifications arises from the division of the Executive Committee and the Committee on Admissions into three classes, each serving for three years, which is prescribed by the constitution. This permits an annual infusion of new members, but prevents a sudden change in the entire personnel of those important committees and thus protects the continuity of corporate policy. That same end is served by the custom that has evolved of reëlecting the Recording Secretary and the Treasurer so long as they are willing to discharge their onerous duties. These two officers are *ex officio* members of the Executive Committee and thus become the special exponents in that body of the traditions of the Association. How helpful that conserving influence may become was shown throughout Mr. Silas B. Brownell's service as Recording Secretary from 1878 to 1917, and Mr. S. Sidney Smith's service as Treasurer from 1891 to 1918. All the other committees except the Library Committee and the House Committee, which are chosen by the Executive Committee, are appointed by the President, and in their selection he is guided by the same considerations of efficiency and continuity. The committees themselves in their turn usually reëlect their chairmen. In the case of the President, whose office constitutes perhaps the highest professional distinction open to the bar of the city, custom has fixed, though not invariably, a term of two years of service.

To provide for the efficient conduct of these varied activities, a permanent home was essential. Soon after the organization was completed, this need was met by the acquisition of the dwelling house twenty-five feet wide known as No. 20 West Twenty-seventh Street. After making the requisite alterations the Association, in June, 1870, moved into the building and there established its growing library, its conference rooms, and its meeting hall. The membership at that time was about six hundred. It was not long before these quarters seemed inadequate, and in September, 1872, a committee was appointed to consider the propriety of procuring another site and erecting thereon a new building for the occupation of the Association. In supporting this action Mr. Tilden congratulated the Association on the results it had already accomplished, and urged its establishment in a building better suited to its dignity and growing importance. It was not until January, 1874, that the committee reported the selection of a plot seventy-five feet wide immediately adjoining the church at the northwest corner of Fifth Avenue and Twenty-ninth Street, and known as No. 7 West Twenty-ninth Street. The westerly forty-five feet of this plot were occupied by an old-fashioned four-story brick dwelling house. The easterly thirty feet contained a lawn between the house and the church. The cost of this property was estimated at $100,000. Authority was then given to the committee to see whether the property could be obtained at that price. These negotiations were suspended until some satisfactory method of raising the necessary funds could be devised. A sub-

Successive homes of the Association

scription plan presented by the committee in March, 1875, was approved, and in April the committee reporting that $30,000 had already been subscribed for the purpose by members, the purchase of the premises and the sale of the Twenty-seventh Street house were authorized. The alterations necessary to adapt the Twenty-ninth Street house to the uses of the Association called for $23,500 more. This total cost of $123,500 was met by $45,650 of subscriptions, $20,000 of accumulated funds, $32,500 proceeds of the Twenty-seventh Street house, and $30,000 in a mortgage on the Twenty-ninth Street plot. The library, which at that time numbered about 9000 volumes, was placed on the second floor of the new building. Meetings of the Association were held on the first floor, and the other rooms in the building were used for committee and conference purposes. By October, 1880, the continued growth of the institution suggested the advisability of utilizing the vacant land for the construction of a more spacious meeting hall and for an addition to the library. A three-story structure, opening into the existing club house, was accordingly designed and erected, the ground floor being used for the hall and the second floor as an annex to the library. By January, 1882, this improvement was completed. Its total cost, including furniture and the necessary alterations to the original building, was about $38,000. Mr. George L. Rives was the leading member of the committee having charge of this construction. These enlarged quarters on Twenty-ninth Street served the Association comfortably for several years. The steady increase of membership and in the number and value of books in the library induced the Executive Com-

mittee in March, 1889, to prepare plans for the construction on the same plot of a more commodious fireproof building. The project, however, when reported to the Association for adoption, was defeated. Nothing further was done until June, 1894, when another Executive Committee became still more firmly convinced that the convenience of the members, the safety of the library, and the dignity of the organization demanded a larger and more substantial house. This conviction bore fruit in the appointment of a subcommittee of three, which, after investigation, selected as possessing the greatest advantages of accessibility and neighborhood, a plot of ground running through from Forty-fourth Street to Forty-third Street, between Fifth and Sixth Avenues, having a frontage of about eighty-five and a half feet on Forty-fourth Street and fifty-two and a half feet on Forty-third Street. This was approved by both the Executive Committee and the Association, and the property was acquired at a cost of $203,550. To the same subcommittee was then delegated the building of a suitable fireproof structure, and the present home of the Association was the result. Mr. Cyrus L. W. Eidlitz was retained as an architect, first to prepare tentative plans, and subsequently, when these plans were approved, to complete the construction of the building. Such construction was begun in June, 1895, and completed in October, 1896, at a cost of $380,700. On the architectural side, external beauty was subordinated to convenient internal arrangement, but the result has stood the test of time, and has generally been recognized as a creditable addition to the architecture of the city. The building was designed to supply a home

suggestive of the noble origin, the substantial achievements, and the incalculable possibilities of future usefulness which the Association represents, and was accepted by the Association from the Executive Committee in serious mood to stand, in Burke's phrase, as "a sacred temple for the perpetual residence and unceasing dissemination of an inviolable justice."

In this brief outline of the acquisition by the Association of its successive homes, it may be of interest to note a family thread of devotion to the ideals for which the Association has always stood. Mr. Augustus F. Smith, of the widely-known firm of Martin & Smith, played a prominent part, from 1870 to his death in 1876, in the struggle to purify the bench and bar. Besides participating actively in planning and forming the Association he was a member of its first Executive Committee, negotiated the purchase of the Twenty-seventh Street house, was one of the trustees to whom it was conveyed pending incorporation of the organization, and shared in adapting the building to meet the use of members. After it was outgrown it was natural that he should be named on the committee to procure a new home. This larger work, too, was performed to the general satisfaction, although in its later stages failing health prevented his actual participation therein. When in 1894 another change was made, his son, Mr. S. Sidney Smith, was selected by the Executive Committee as one of its subcommittee to carry out the undertaking, and to his broad vision and tireless effort is due much of the credit for the result achieved.

When the present building was projected the membership of the Association was about 1300, and its library

consisted of about 45,000 volumes. This membership has now increased to about 2300 and the library to about 129,000 volumes. From time to time the Executive Committee has endeavored to provide adequate space for possible additional construction, and at the same time to protect the light, air, and architectural future of the building. With this end in view, their first purchase, in 1902, was of No. 41 West Forty-third Street for $75,000. This lot was twenty-two feet six inches wide, and immediately adjoined the easterly wall of our original building. In February, 1903, the next lot to the east, No. 39 West Forty-third Street, of the same width, was acquired for $65,000. These two lots were altered and leased for a term of years at a favorable rent. In 1906 the Association acquired a plot forty-four feet in width on the south side of Forty-fourth Street, immediately to the east of the Association's main building, at a cost of $154,000, and in September, 1910, No. 37 West Forty-third Street, twenty-two feet six inches wide, for $80,000. Pending their utilization by the Association, the two lots on Forty-fourth Street and the lot on Forty-third Street have been leased. Upon the expiration of the lease of Nos. 39 and 41 West Forty-third Street in 1911, the growing demands of the Association made it advisable to annex the building on the two lots to the main Association building. The first floor of the added building is now utilized for the offices, witness rooms, and meeting room of the Committee on Grievances, and the upper floors for conference and private study rooms. The Association thus owns a plot of ground one hundred and thirty feet wide on Forty-fourth Street and one hundred and twenty feet wide on Forty-third

Street. By reason of its situation, size, and shape, this tract of land has special plottage and other real estate advantages. Its total cost to the Association in land and buildings was about $1,000,000, and a late estimate of its value places it at not less than $1,500,000. So that in addition to providing itself with quarters adequate to its steadily growing needs, the Association seems to have fared well in nearly all of its real estate transactions. The Twenty-seventh Street house was bought for $43,000 and sold for $32,500. The Twenty-ninth Street property cost about $161,000, and was sold for $225,000, and the present holdings are valued at a large sum in excess of their cost. It has been almost the invariable mistake of growing organizations in this city to provide inadequately for their future expansion. Thus it has become necessary for them to undergo the inconvenience and increased expense of building a new house elsewhere, or of acquiring additional adjacent land for improvement at materially higher prices, and usually with less satisfactory results. The Association has wisely avoided that error, and is now provided with land sufficient for its needs for many years to come. Meanwhile the unused land protects our present buildings from undesirable encroachments, and permits a variety of plan in devising future accommodation for the members.

The financial needs of the institution have been met as they arose either by gifts or by borrowing. At the outset, individual subscriptions provided for the foundation of the library and the acquisition and equipment of a club house. When the move was made from Twenty-seventh Street to Twenty-ninth Street

Financial outline

the members again gave the necessary funds. The change to Forty-third and Forty-fourth Streets was arranged by a mortgage on the new building. With the exception of occasional contributions by a few friends of the library for its special purposes, no appeal for money was made to the members between 1875 and 1916. By the latter year the large increase in maintenance charges, notably for books, taxes, and expenses of the Committee on Grievances, had brought about an annual deficit. An effort was then made by a committee consisting of the several former Presidents of the Association to raise by subscription a permanent endowment fund of $200,000. Of this $140,000 had been pledged, when the outbreak of the war put an end to the subscriptions. The committee has appropriated $100,000 of this sum to the endowment of the library, and in recognition of the conspicuous value of the library for research work the Carnegie Corporation has given another $100,000 for the same endowment. To meet the special burdens of 1918 and 1919, contributions of about $10,000 in each year were made by the members. Recently a further appeal has been made to them to discharge the $107,000 of accumulated unsecured indebtedness of the Association. This has had a generous and wide response and more than $110,000 has been obtained. In the space of three years the members have thus given a total of about $270,000. The Association is now left with a funded debt of $700,000, secured by mortgage on the property in Forty-third and Forty-fourth streets. Meanwhile, other gifts and legacies aggregating about $150,000 have been received from members, and the bulk of these constitutes, either by the terms of the gift or by

the action of the Association, a permanent endowment, the income from which is used principally for the maintenance of the library. In addition, by the doubly welcome action of Miss Emily F. Southmayd, a permanent fund of $100,000, also primarily devoted to the purchase of books, was established in 1913, as a memorial to her distinguished brother, the late Charles F. Southmayd, a founder and life-long friend of the Association. As against its mortgage indebtedness of $700,000, the Association thus has a land equity of about $800,000, endowment aggregating about $470,000, a library worth perhaps more than $500,000, and furniture and equipment not less than $50,000, a total of $1,820,000 of net assets. The expense of carrying on the great work of the institution is heavy and is constantly increasing. The annual dues of members are barely sufficient for the purpose. The initiation fees should regularly be set aside to amortize the mortgage debt. Hence it is clear that the corporate aims should continue to have the pecuniary as well as the moral and professional support of the members. Current gifts bring immediate relief, and a legacy to the Association is a peculiarly appropriate memorial of a lawyer's career.

Impressive achievements of Association

Even as set forth in this slight sketch the achievements of the Association make an impressive total. They show, among other aspects, the intimate relation which the sober and equitable enactment and administration of the laws must bear to our individual and collective life. The future activities of the Society, guided by the experience of the past, unfold themselves clearly and urgently. But the members

should not be content with this. The needs of the time call for an enlarged program. As conditions following the Civil War had a potent effect in the formation of the Association, so the sequels of the World War present new dangers and new duties. To deal with these effectively the bar can find no better inspiration than the example of their predecessors who brought the Association into being.

Future tasks

Of those founders and leaders, almost all of whom we have now lost, excessive praise would be difficult. They did as noble a work as ever fell to lawyers to do, and in its performance brought lasting honor to the entire profession. They were indeed "men renowned for their power," "wise and eloquent in their instructions" and "leaders of the people by their counsels."

Tribute to founders

Under that leadership the community had striking proof of what a high minded, courageous and united bar could accomplish in a grave civic crisis. The legend on the corporate seal, a replica of which hangs in the meeting hall of the Association, concludes a sentence from the Politics of Aristotle which may be rendered: "Where the laws are not enforced there can be no free state, for it is essential that the law be supreme." These words are as profoundly true now as they were when written twenty-two centuries ago. In the present national and world ferment the cause of justice and righteousness and peace may have need of another spiritual uprising by the profession specially charged with the regulation and enforcement of government by law.

Conclusion

PRESIDENTS OF THE ASSOCIATION

1870 TO 1920

*WILLIAM M. EVARTS, 1870 to 1879
*STEPHEN P. NASH, 1880 and 1881
*FRANCIS N. BANGS, 1882 and 1883
*JAMES C. CARTER, 1884, 1885, and 1897 to 1899
*WILLIAM ALLEN BUTLER, 1886 and 1887
*JOSEPH H. CHOATE, 1888 and 1889
*FREDERIC R. COUDERT, 1890 and 1891
*WHEELER H. PECKHAM, 1892 to 1894
*JOSEPH LAROCQUE, 1895 and 1896
*JOHN E. PARSONS, 1900 and 1901
WILLIAM G. CHOATE, 1902 and 1903
ELIHU ROOT, 1904 and 1905
*JOHN L. CADWALADER, 1906 and 1907
*EDMUND WETMORE, 1908 and 1909
FRANCIS LYNDE STETSON, 1910 and 1911
LEWIS CASS LEDYARD, 1912
*WILLIAM B. HORNBLOWER, 1913 and 1914†
GEORGE W. WICKERSHAM, 1914 to 1916
GEORGE L. INGRAHAM, 1917 and 1918
JOHN G. MILBURN, 1919 and 1920

* Deceased.

† Mr. Hornblower resigned February 14, 1914, upon his appointment as a Judge of the Court of Appeals.

RECORDING SECRETARIES

1870 TO 1920

Ex-officio members of the Executive Committee since 1880

*AUGUSTUS R. MACDONOUGH, 1870 to 1874
*MASON YOUNG, 1875 to 1877
*SILAS B. BROWNELL, 1878 to 1916
CHARLES HOWARD STRONG, 1917 to 1920

TREASURERS

1870 TO 1920

Ex-officio members of the Executive Committee since 1872

*ALBON P. MAN, 1870 and 1871
*WILLIAM M. PRICHARD, 1872 and 1873
*EDWARD MITCHELL, 1874 to 1884
WILLIAM P. DIXON, 1885 to 1890
S. SIDNEY SMITH, 1891 to 1918
WILSON M. POWELL, 1919 and 1920

* Deceased.

CALL FOR ORGANIZATION OF THE ASSOCIATION

1869

The undersigned, Members of the Bar of the City of New York, believing that the organized action and influence of the Legal Profession, properly exerted, would lead to the creation of more intimate relations between its members than now exist, and would, at the same time, sustain the profession in its proper position in the community, and thereby enable it, in many ways, to promote the interests of the public, do hereby mutually agree to unite in forming an Association for such purposes:

And we do hereby appoint Messrs. JAMES C. CARTER, ALBERT MATHEWS and EDMUND RANDOLPH ROBINSON a Committee to call a meeting of the subscribers at such time and place as may be designated by said Committee; at which meeting measures shall be taken for the organization of the proposed Association.

New York, December, 1869.

*Wm. M. Evarts	*A. J. Vanderpoel
*Henry Nicoll	*C. Van Santvoord
*William Allen Butler	*Thos. C. T. Buckley
*John K. Porter	*D. B. Eaton

* Deceased.

*A. Underhill
*D. D. Lord
*F. N. Bangs
*Henry H. Anderson
*Edwards Pierrepont
*E. H. Owen
*H. M. Alexander
*Richard S. Emmet
*Clarkson N. Potter
*Thos. H. Rodman
*B. F. Dunning
*John J. Townsend
*Sidney Webster
*C. A. Seward
*Charles M. Da Costa
*Aug. F. Smith
*Luther R. Marsh
*Joseph H. Choate
*Chs. F. Southmayd
*Waldo Hutchins
*Lucien Birdseye
*Charles P. Crosby
*Ashbel Green
*Wm. M. Prichard
Wm. G. Choate
*L. L. Coudert
*John Erving
*John H. Platt
*S. J. Tilden
*H. M. Ruggles
Everett P. Wheeler
*Charles A. Rapallo
*Charles P. Kirkland
*W. W. Macfarland
*Charles A. Davison
*F. R. Coudert
*Charles Jones
*C. J. De Witt
J. Frederick Kernochan
*J. W. Edmonds
*William Hildreth Field
*Charles H. Glover
*Buchanan Winthrop
*Frank E. Kernochan
*Elial F. Hall
*John M. Knox
*Herbert B. Turner
*Charles P. Kirkland, Jr.
*John McKeon
*Charles E. Butler
*S. P. Nash
*Samuel E. Lyon
*Alexander Hamilton, Jr.
*David Dudley Field
*E. W. Stoughton
*James Emott
*Benj. D. Silliman
*John Slosson
*Benjamin K. Phelps
*Abm. R. Lawrence, Jr.

* Deceased.

*Charles Coudert, Jr.
*Henry A. Cram
*F. F. Marbury
*Wm. E. Curtis
*Murray Hoffman
*Hamilton W. Robinson
*J. E. Burrill
*J. W. Gerard, Jr.
*Alvin C. Bradley
*George T. Strong
*William Betts
J. W. Ostrander
*W. A. Ogden Hegeman
*William Barrett
*David Thurston
*William Henry Arnoux
*Charles C. Jones, Jr.
*Franklin A. Wilcox
*Theodore M. Davis
*Charles D. Ingersoll
*Edm'd Randolph Robinson
*Henry R. Winthrop
*Henry Hilton
*John S. Jenness
*M. Van Buren Wilcoxson
*E. L. Fancher
*Charles F. Sanford
John Whipple
*F. S. Stallknecht
*Grosvenor P. Lowrey
*Andrew Stewart
*Edward Holland Nicoll
*Frederick Smyth
*Lyman W. Bates
*Charles A. Peabody
*E. Louis Lowe
*George N. Titus
*John P. Crosby
*Albon P. Man
*John E. Parsons
*E. C. Benedict
*J. S. Bosworth
*Edgar S. Van Winkle
*G. M. Speir
*Lewis L. Delafield
*Charles F. Blake
*Livingston K. Miller
Wm. S. Opdyke
*John E. Ward
*Charles B. Stoughton
*Albert Mathews
*Flamen B. Candler
*Philo T. Ruggles
*B. Roelker
*William Tracy
*Ch. Francis Stone
*George W. Soren
*George M. Miller
*Wheeler H. Peckham
*Theodore W. Dwight

* Deceased.

*Oscar Smedberg
*Henry J. Scudder
*Townsend Scudder
*James P. Lowrey
*Henry D. Sedgwick
*Richard H. Bowne
*Smith Clift
*Charles D. Burrill
*George C. Barrett
*Henry R. Beekman
*James S. Huggins
*John Berry
*F. J. Fithian
*Edward Patterson
*E. Ellery Anderson
*Jos. B. Lawrence
*Charles E. Strong
A. P. Whitehead
*T. R. Strong
*Wm. J. Hoppin
*W. Q. Morton
*Henry Whittaker
*Thos. M. Wheeler
*Charles E. Whitehead
*John N. Whiting
*G. M. Ogden
*Cadwallader E. Ogden
*Robert Benner
Elbridge T. Gerry
*Charles Tracy
*Charles Edward Tracy
J. Evarts Tracy
*George DeForest Lord
*John C. Dimmick
*J. S. Winter
*Joshua M. Van Cott
*George W. Parsons
*Hiram Barney
*John Sherwood
*Walter L. Livingston
*Albert Stickney
*Henry A. Tailer
*Alfred L. Edwards
*Aug. R. Macdonough
*W. W. Goodrich
*S. Merrihew
*Charles B. Moore
*Noah Davis
*Julien T. Davies
*Gerard Beekman
*Eugene H. Pomeroy
*Hamilton Morton
*Thomas C. Ingersoll
*Richard H. Clarke
*Frederick Kapp
*Edmund Wetmore
*C. A. Hand
*F. H. Churchill
*Henry E. Davies
*R. M. Harrison

* Deceased.

*Robert Sewell
E. G. Drake, Jr.
*Henry B. Hammond
*John A. Foster
*Smith E. Lane
*Thomas E. Stillman
*Thomas H. Hubbard
*Morris S. Miller
*John G. Vose
*Dwight H. Olmstead
*James I. Roosevelt
*Frederick E. Mather
*William Watson
John H. Risley
C. B. Wheeler
*D. C. Van Cott
*Beverly Robinson
*William Jay
*John A. Weeks
*Hooper C. Van Vorst
*George H. Forster
*James F. Dwight
*James C. Carter
*Jos. Larocque
*W. Stanley
*Francis C. Barlow
*Charles H. Hunt
John S. Davenport
*John J. Latting
*John L. Cadwalader
*Edward H. Anderson
*Charles Nettleton
*Edgar Ketchum
*A. P. Ketchum
*E. Ketchum, Jr.
*John Fitch
*Samuel G. Glassey
*James R. Jessup
*Joseph B. Varnum
*P. W. Turney
*Osborne E. Bright
*Benj. T. Kissam
*Henry P. Townsend

* Deceased.

CHARTER

1871

AN ACT TO INCORPORATE THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK. Passed April 28, 1871

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The members of the Bar Association of the City of New York, of which William M. Evarts is President, James W. Gerard, Samuel J. Tilden, Joseph S. Bosworth, John Slosson and Edgar S. Van Winkle, are Vice-Presidents, and all persons who shall hereafter be associated with them, are hereby created a body corporate, under the name of "THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK," for the purpose of maintaining the honor and dignity of the profession of the law, of cultivating social relations among its members, and increasing its usefulness in promoting the due administration of justice.

SECTION 2. Said corporation shall have power to acquire, by lease or purchase, a suitable building, library and furniture for the use of the corporation; to borrow money for such purposes and issue bonds therefor, and to secure the same by mortgage; and generally to acquire and take

by purchase, gift, devise, bequest subject to the provisions of law relating to devises and bequests by last will and testament, or otherwise, and to hold, transfer and convey all or any such real and personal property as may be necessary for attaining the objects, and carrying into effect the purposes of such corporation; provided, it shall not hold any real estate, the value of which shall exceed in the aggregate two hundred thousand dollars.

SECTION 3. Such corporation shall have power to make and adopt a Constitution, By-Laws, Rules and Regulations for the admission, government, suspension and expulsion of its members, the collection of fees and dues, the number and election of its officers, and to define their duties, and for the safe keeping of its property and management of its affairs, and from time to time to alter, modify and change such Constitution, By-Laws, Rules and Regulations.

SECTION 4. All interests of any member of said corporation in its property shall terminate and vest in the corporation, upon his ceasing to be a member thereof by death, resignation, expulsion or otherwise.

SECTION 5. The several officers of said Association, at the time of the passage of this Act, shall continue to hold their respective offices as officers of this corporation, with the powers and duties prescribed by the Constitution and By-Laws of said Association, until their successors shall be elected and installed; and in case of any previous vacancy among such officers, it shall be filled in the manner

prescribed by the Constitution and By-Laws already adopted by said Association, or as the same may, in conformity therewith, be altered or amended by this corporation; and the present Constitution and By-Laws of said Association shall be the Constitution and By-Laws of said corporation until so altered or amended by said corporation; and all property, rights and interests of said Association now held by any or either of the officers thereof, or any person or persons, for its use and benefit, shall, by virtue of this Act, vest in and become the property of the corporation hereby created, subject to the payment of the debts of said Association.

SECTION 6. Such corporation shall possess the powers, and be subject to the liabilities, prescribed by the Third Title of the Eighteenth Chapter of the First Part of the Revised Statutes.

SECTION 7. The Legislature may at any time alter, modify or repeal this act.

SECTION 8. This Act shall take effect immediately.

COMMITTEE ON SEMI-CENTENARY CELEBRATION

John G. Milburn, Chairman

James Byrne
Alfred A. Cook
Frederic R. Coudert
Paul D. Cravath
Robert W. De Forest
Lewis L. Delafield
Nathaniel A. Elsberg
Charles S. Fairchild
James A. Foley
Austen G. Fox
Frederick Geller
James W. Gerard
William D. Guthrie
Charles P. Howland
Charles E. Hughes
George L. Ingraham
Russell C. Leffingwell
Jeremiah T. Mahoney
Schuyler M. Meyer
William Church Osborn
Herbert Parsons
Wilson M. Powell
William V. Rowe
Henry W. Sackett
Francis M. Scott
Edward W. Sheldon
S. Sidney Smith
Charles H. Strong
Theron G. Strong
Archibald G. Thacher
Howard Townsend
George W. Wickersham

Charles S. McVeigh, Secretary